S. HRG. 103-372

CHARITABLE SOLICITATION FRAUD

Y 4.C 73/7:S.HRG.103-372

Charitable Solicitation Fraud, S.Hr...

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

OCTOBER 11, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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CHARITABLE SOLICITATION FRAUD

MONDAY, OCTOBER 11, 1993

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Las Vegas, NV.

The committee met, pursuant to notice, at 10 a.m. in the Executive Board Room, Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, NV, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Claudia A. Simons, staff counsel, and Moses Boyd, senior staff counsel; and Sherman Joyce, minority staff counsel.

OPENING STATEMENT SENATOR BRYAN

Senator BRYAN. Good morning, ladies and gentlemen. Let me welcome you to the Senate Commerce Committee's Consumer Subcommittee hearing which this morning will focus on problems of charitable solicitation fraud, or as it is known, telefunding.

Before beginning my opening statement, I would like to identify the people who join me here this morning. To my far left, your right, Tiger Joyce who is part of the Senate Commerce Committee's staff. Immediately to my left is Andy Vermilye of my office. To the far right is Moses Boyd from the subcommittee staff, and Claudia Simons, also from the subcommittee staff, and we are delighted to have them with us this morning.

We all know the feeling—it is almost impossible to withstand appeals for aid to children, cancer research, animal abuse, or international hunger, especially when there's someone pleading either over the phone or in person at your doorstep tugging at your conscience.

Americans are by nature the most generous people in the world, and they have responded overwhelmingly to these charitable solicitations over the years. Last year it was estimated that Americans contributed $67 billion to various charities across the country.

Unfortunately another aspect of our society which is less praiseworthy is that where there are amounts of money, a pool of money this deep, that it inevitably attracts profiteering and abuse.

Most of our law enforcement and legislative efforts dealing with telemarketing have focused on organizations which sell products and offer prizes, and make these awards as a part of a telephone solicitation.

Nevadans have been victimized by a number of these scam operations over the years. Responding to this concern and recognizing

the need to act the State of Nevada enacted legislation to protect its citizens from fraudulent telemarketing. And I would like to acknowledge and to compliment those that were involved in drafting the legislative response, as well as those who are involved with policing the telemarketing industry in our State.

At the Federal level, we have been involved too. Since coming to the Congress in 1989, in each of the preceding two sessions including the present session, I have introduced a telemarketing fraud bill. We've been able to get that bill through the Senate.

This year we have a bill that is very similar to our own that has been introduced and cleared in the House, and we have our own version in the Senate that has cleared the Senate. And I am hopeful that we are going to be able to resolve some of the minor differences between those two pieces of legislation and to indeed this year get a Federal telemarketing piece of legislation enacted.

I suppose another quality of the American public is its incredible ingenuity and incredible resourcefulness. In its best form it is what makes our society function. It is part of the entrepreneurial spirit which has made the free enterprise system in America the envy of the world.

Unfortunately, the same entrepreneurial spirit exists with respect to those who are less focused on the positive aspects of our society, but who use these entrepreneurial skills to prey upon those people who are less sophisticated and who are more vulnerable to the kinds of solicitations which are occurring and which are the focus of our hearing this morning.

These folks have chameleon-like characteristics. There is a new scam literally every day of the week, and people who responded to previous scams are themselves victimized a second or third time, and perhaps some of our witnesses this morning will be commenting on this.

The good news in telemarketing fraud is that as a result of the legislation enacted by the Nevada Legislature and a concerted effort by the law enforcement community at the Federal level, at the State level, and at the local level, the number of telemarketing complaints have declined markedly. The bad news is that the number of complaints concerning fraudulent telefunding, that is charitable solicitation fraud, has increased dramatically.

Fraudulent telefunding is similar in many respects to fraudulent telemarketing. One of the differences that frequently exists is that rather than receiving a prize or some type of inducement as part of making a purchase, with respect to charitable solicitation fraud it is frequently in the form of a solicitation where you make a donation to some worthy cause which you believe is a recognized group that you want to be generous with, and there is no suggestion that you will receive some type of a prize or a reward as a consideration of that solicitation.

Under Federal consumer protection laws and many State laws, certain activities of legitimate nonprofit charities are not subject to scrutiny. This has provided a loophole of sorts for the scam operators and has made the job for enforcement authorities all the more difficult.

One tactic used by fraudulent telefunders, again that's the charitable solicitation fraud, is to call victims who have been taken in

the past by a phony telemarketing scheme, particularly the elderly, offer them the opportunity to win big money or a fabulous prize provided they make a donation to some charity. In this way the telefunder assures his or her target that you will, "be helping the needy while at the same time ensuring your own chance to win big."

Another strategy used by these characters is to claim falsely that they are calling on behalf of a well-known and legitimate organization such as the police department, or the telefunder may use a name that sounds very similar to a well-established and recognized charity, and take advantage of the confusion of the name on the part of the potential donor make his or her pitch based upon that.

Oftentimes these people are calling for groups with wholesome names such as Helping Hands for the Blind, Missing Children's Report, and American Wheelchair Veterans Association.

The public needs to be able the find the answers to certain questions before parting with hard-earned dollars. And some of our witnesses this morning I am sure will offer some suggestions as to how the public can protect itself from this charitable solicitation fraud.

Is this group that is soliciting really representing the firefighters as the solicitor may contend or another worthwhile group, or is it a professional fundraiser? What percentage of the money that is collected actually goes to the charity? Oftentimes it could be as little as 15 cents on the dollar. These are all questions that need to be asked before an individual decides to part with his or her hard-earned dollar.

We will no doubt hear about other tactics that are being used when our panel of witnesses testifies this morning. We will also examine ways to address what is surely becoming an increasingly serious consumer problem. Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. This morning the committee is holding a hearing to address the problem of charitable solicitation fraud. This growing consumer problem incorporates many of the elements of telemarketing fraud, but has the added twist of playing on consumers' good will and charity.

Charitable solicitation fraud can take several different forms. For example, a for-profit company may claim, falsely, that it is raising money for a nonprofit charity. Alternatively, an illegitimate charity may adopt the name of a similar, well-recognized, legitimate charity, in an attempt to reap the benefits caused by poetntial donors' confusion as to which charity they are actually assisting. Some fraudulent operators tell potential donors that they may win valuable prizes if they make a sizable contribution to a certain charity. Unfortunately, the true beneficiaries of these practices are the scam artists themselves, not legitimate charities, to the detriment of both generous consumers and legitimate charitable organizations.

Our witnesses this morning bring a varied perspective to the problem of charitable solicitation fraud, and I look forward to hearing their testimony.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you, Mr. Chairman. We will hear from a representative from the Federal Trade Commission, the Federal Bureau of Investigation, and the State of Nevada Attorney General's Office, in addition to a representative from the Las Vegas Metropolitan Police Department and the State of Nevada Highway Patrol, the Las Vegas Better Business Bureau, Opportunity Village, the Las Vegas chapter of the American Cancer Society, the United Way of Southern Nevada, and others.

So, now at this point I would like to ask our first panel to join us for their presentation. We have with us this morning, joining us from the attorney general's office, Deputy Attorney General Ms. Colette Rausch; from the Federal Bureau of Investigation, Special Agent in Charge Randy Prillaman; from the Federal Trade Commission, Mr. Jeffrey Klurfeld; and the executive director of the Better Business Bureau of Southern Nevada, Mr. William Henderson.

If you will take your seats, and when you get comfortably situated we will begin and hear from the representative from the attorney general's office.

Let me say that I appreciate your joining us this morning, and I appreciate those in audience here that joined us as well today. For some I know today is a Federal holiday, so I particularly appreciate you joining us on the occasion of such a holiday.

Ms. Rausch, we will hear from you. Good morning and welcome to our subcommittee hearing.

STATEMENT OF COLETTE RAUSCH, DEPUTY ATTORNEY GENERAL, STATE OF NEVADA

Ms. RAUSCH. Good morning. Thank you. Mr. Chairman and subcommittee staff members, I am Colette Rausch-Richie, senior deputy attorney general and director of the telemarketing consumer fraud unit of the Nevada Attorney General's office. The unit was created by the 1993 Nevada Legislature to combat telemarketing fraud.

I appreciate the opportunity to appear before you today on behalf of Attorney General Frankie Sue Del Papa to discuss the problem of charitable solicitation fraud and the attorney general's efforts to combat this problem.

Charitable solicitation fraud is a matter of serious concern to consumers, legitimate and worthwhile charitable organizations, and State attorneys general. The 1993 Nevada Legislature significantly changed the way Nevada regulates its telemarketing industry and enforces its telephone solicitation fraud laws.

In response to the growing level of fraud in the telemarketing industry, regulatory structures changed from an administrative scheme to a registration system. The new law improves the attorney general's ability to fight fraud from civil and criminal prosecution.

Additionally, understanding that eliminating telemarketing fraud is an impossibility, the Nevada Legislature appropriated funds for consumer education to help prevent people from becoming victims in the first place.

Since July, the attorney general's office has been staffing the unit, building its network with local, State, and Federal law en-

forcement agencies, setting priorities for enforcement, and investigating cases.

During this period we have seen an interesting change in the playing field. We have noted an increase in the number of phone calls and written complaints from the public alleging charitable solicitation fraud. We are witnessing players from the traditional telemarketing industry who used to be involved in chance promotion and sweepstake type activities moving into the charitable solicitation business. Some are creating their own so-called charities. They are using the same tactics they use when telemarketing, but rather than selling water purifiers or vitamins, they are telefunding or soliciting donations by telephone.

This activity is not new and it is certainly not unique to Nevada. Across the country scams come and go and change their form, but always endure so long as there are crooks looking for quick cash and people unsuspecting of the pitfalls that face them.

We can only speculate that the current movement to telefunding is due to the stronger Nevada telemarketing law and the FTC's heightened enforcement action against telemarketers in our State.

Charitable solicitation fraud occurs in a number of forms including deceiving the public about who is raising the funds and for whom or what purpose the funds are being raised, deceiving the public about the percentage of the amount raised which will be used for the stated purpose, and outright fraud as to whether the fundraising is for an actual charitable purpose.

Legitimate charities and well-intentioned donors fall victim to scam artists. We all receive phone calls from people asking for financial assistance for a variety of programs. Many legitimate charities rely on fundraising by telephone for their support. Because of shady telefunders and sham charities, many people refuse to donate over the phone. We hear daily from consumers who have lost confidence in the integrity of the fundraising process.

The attorney general's office is not the sole law enforcement agency with the jurisdiction to pursue this problem. To confront the problem our office recognizes that we are limited by law and resources. Accordingly, we will strive to coordinate efforts with local law enforcement agencies, other State attorneys general through the National Association of Attorneys General or NAAG, the Federal agencies such as the FTC, the Postal Inspection Service, the FBI, and IRS.

The National Association of Attorneys General and the National Association of State Charities, or NASCO, are actively working to improve regulation of charitable trusts and solicitations to protect consumers and legitimate charities. A representative from our office attended a recent joint NAAG–NASCO conference to explore the issues.

A number of States have divisions within their attorney general or secretary of state offices dedicated to regulating charitable solicitations. States such as Massachusetts, Pennsylvania, Minnesota, and New York have been very active in the area for a number of years and would be good resources for the subcommittee to tap.

Nevada and many other States are stepping up efforts to expose and prosecute those who abuse the public trust in charities. We are increasing our efforts to educate consumers to distinguish between

legitimate charities and scam operators. The goal is to help donors make sure that their donations go to the stated purpose. We are doing our best to put scam operators out of business.

Due to constitutional concerns, the U.S. Supreme Court has curtailed the State's authority to enact legislation to regulate charitable solicitation activity. However, depending upon the facts of the case States can turn to criminal or consumer protection laws that prohibit misrepresentation, deception, and fraudulent activities. No one, even in the name of charity, has the right to lie, cheat, or steal.

We ask the subcommittee to work with the FTC to determine if its jurisdiction should be broadened and its resources expanded to give it the tools it needs to take action in this area. We also ask Congress to look at the Federal tax laws to determine if any tightening of the reporting rules and exemptions is appropriate.

However, it is important that legislation not chill the fundraising activities of legitimate and worthy charities. Congressional action to combat abuse would be a positive development so long as the States are not preempted in their traditional role and authority to protect consumers and regulate charitable solicitations.

The Nevada Attorney General continues to be committed to making fraudulent telemarketers and telephone solicitors a high priority in its law enforcement and consumer education effort, and will continue to work together with local, State, and Federal agencies.

On behalf of Attorney General Frankie Sue Del Papa, I thank the subcommittee for this opportunity to provide our views on this consumer problem.

Senator BRYAN. And the subcommittee thanks you very much, Ms. Rausch. And at the conclusion of the panel I would like to ask some questions of you and the other members of the panel.

Joining us next from the Federal Bureau of Investigation is Special Agent in Charge, Randy Prillaman. Good morning.

STATEMENT OF RANDY PRILLAMAN, SPECIAL AGENT IN CHARGE, FEDERAL BUREAU OF INVESTIGATION

Mr. PRILLAMAN. Good morning, Mr. Chairman. I am pleased to appear today on behalf of the Las Vegas Division of the FBI and share some important information regarding telemarketing fraud.

Telemarketing fraud falls under the white collar crime program in the FBI, and in Las Vegas it is the No. 1 priority investigated by the FBI really within our whole white collar crime program. Most telemarketing cases are investigated utilizing the Federal wire fraud, money laundering, and mail fraud statutes. These statutes are limited in their application.

I am not at liberty to discuss specific cases or current investigations, however, I hope I can provide some insight into the problems which are currently being identified.

Before I start let me state that telemarketing is a viable marketing tool, and most telemarketing businesses are operated legally. However, over the years, the Las Vegas area has been a haven for telemarketers, both legal and illegal. The lack of strict regulation, the inability of law enforcement to prevent the profit potential of telemarketing and the ability of telemarketing to change their

names and places of operations virtually overnight has severely hampered our efforts.

Telemarketing investigations are unique since the victims are generally located out of the State of Nevada, and pertinent bank records and corporate records are frequently also out of State. The use of mail drops, mail forwarding services, courier services, and private carriers for the transportation of prizes or checks from the victim make prosecution complex and costly.

Most telemarketing cases currently under investigation by the FBI are being worked jointly by the FBI and the U.S. Secret Service, the postal inspectors, and more frequently with the newly formed telemarketing unit from the Nevada Attorney General's office.

In March 1993, the FBI announced Operation Disconnect, a 3-year undercover operation which included 18 separate field offices coast to coast. The Las Vegas office participated in this national initiative by executing search warrants on 5 separate locations and arresting 10 persons who have been indicted by various offices. These cases are still working their way through the judicial system and will probably take at least 1 more year to resolve.

Immediately after Operation Disconnect, the FBI in Las Vegas and elsewhere began seeing the telemarketers switch to a slightly different scheme to defraud. Victims throughout the country were being called by telemarketers from Las Vegas and elsewhere and were being told that the telemarketers were soliciting funds for various worthy charities. Some victims were being told that the funds were going to charities. Others were being told that they had to enter contests to assist the charities.

We have seen solicitation for the homeless, AIDS victims, battered women, and drug awareness and education. While the floods were still raging in the Midwest, the telemarketers were soliciting funds for displaced flood victims.

Victims are told the proceeds go entirely to the charity and only a small administrative fee is taken out. This administrative fee is frequently the whole contribution.

Telemarketing operations which deal with charitable contributions do not fall within the jurisdiction of current State statutes, and therefore regulation by State officials is restricted.

I would like to offer some suggestions for controlling and restricting this growing area of concern.

No. 1, telemarketing soliciting for charitable organizations should be licensed and regulated by some State agency.

No. 2, the use of persons convicted of fraud to solicit contributions should be prohibited.

No. 3, charitable organizations should be guaranteed a specific percentage of funds solicited. Many organizations receive only a small percentage of the funds solicited and received.

No. 4, customers should be told how much of his or her contribution is actually going to charity.

No. 5, the true value of the prize or awards should be told to the customer.

No. 6, telemarketing companies should be required to identify their true owners and be subject to audits.

No. 7, the use of aliases in telephone solicitation should be prohibited.

No. 8, seizure and forfeiture provisions should be included in any telemarketing law.

No. 9, victim's rights and the ability to recover moneys contributed should be of primary importance.

No. 10, owners of a telemarketing company should be held accountable for the sales pitches that their salesmen give.

To our knowledge, States which have enacted strict laws combined with aggressive law enforcement and/or regulations are not suffering from the growth of illegal marketing which we sometimes see generate from here in Nevada. Hopefully the initiative of the Nevada Attorney General's office, working closely with us in Federal law enforcement, and increased State regulation will have a significant impact in Nevada.

In closing, I can state that with strict enforcement, stricter laws, and a national consumer awareness education program the incidence of telemarketing can be reduced, but unfortunately never eliminated.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you very much, Mr. Prillaman. At the Federal level, the Federal Trade Commission has jurisdiction over telemarketing issues. We are joined this morning by Mr. Jeffrey Klurfeld. It is a pleasure to have you here with us.

STATEMENT OF JEFFREY KLURFELD, DIRECTOR, FEDERAL TRADE COMMISSION, SAN FRANCISCO REGIONAL OFFICE

Mr. KLURFELD. Thank you, Mr. Chairman. My name is Jeffrey Klurfeld, and I am the Director of the San Francisco Regional Office of the Federal Trade Commission.

I appreciate this opportunity to appear before you today to testify on behalf of the Federal Trade Commission regarding questionable solicitations of charitable contributions, especially those solicitations done by professional telemarketers.

The views expressed in this testimony represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual commissioner.

Senator BRYAN. We will note that disclaimer for the record, Mr. Klurfeld.

Mr. KLURFELD. Thank you, Mr. Chairman.

Let me begin by saying, Mr. Chairman, that the Commission shares your concern that unscrupulous individuals and their organizations fraudulently solicit money from consumers who believe that they are contributing to worthy charitable causes. Government can and should play a strong role in preventing and stopping such practices.

The statutory limits on the FTC's jurisdiction over not-for-profit organizations, however, restrict the Commission's authority with respect to most charities. Sections 4 and 5 of the Federal Trade Commission Act provide the Commission with jurisdiction only over corporations organized to carry on business for their own profit or that of their members.

Over the years Federal courts have construed section 4 to bar the Commission from suing any truly nonprofit organization under the FTC Act, thereby removing many if not most charitable organizations from the FTC's scope of authority.

At the same time, however, the courts have held that the Commission must determine its jurisdiction under the act on a case-by-case basis, and that the mere form of the organization's incorporation does not place it outside the authority of the Commission. Therefore, the Commission has jurisdiction over a nonprofit organization that is merely an instrumentality or a shell used to seek direct monetary gain either for itself or for its members.

Against this background relating to the FTC's authority we now address your particular concern relating to telemarketing done in the name of charity—what some people call telefunding. As stated at the outset, the Commission shares the committee's concern that telemarketing scams may be infiltrating the nonprofit sector. The Commission especially shares a concern that telemarketers may be setting up false charities to hide their fraudulent money making operations.

The complaints concerning charities that come to the Commission tend to focus on the following consumer concerns: misrepresentations about the amount or percentage allocated to a specific charitable purpose; misrepresentations about the types of charitable programs if any that an organization runs; copycat names that mislead donors into believing that they are giving to a well-known, established charity; misleading statements about the caller's affiliation with a charitable organization; and sweepstakes or prize promotions requiring consumers to contribute to a purported charity in order to win a prize.

To assess these complaints, the staff of the Commission regularly works with several public and private organizations, and several watchdog or oversight organizations within the private, nonprofit sector itself. For example, the Better Business Bureau's philanthropic advisory service collects complaints regarding charities and publicly confirms the existence of these complaints in response to any inquiries.

The National Charities Information Bureau also has established standards of review of charitable organizations and serves as another source of information for the staff of the Commission. In addition, the American Association of Fund-Raising Counsel annually publishes useful data on charitable giving broken down by types of charities and donors.

State charity officers are another invaluable source of information and advice. Many States vigorously combat deceptive practices under State charitable solicitation statutes.

At the Federal level, the Commission may draw on the knowledge and cooperation of the Internal Revenue Service and the U.S. Postal Service, both of which have authority to investigate and prosecute charities.

The staff of the Commission has received cooperation from many of the groups just discussed. The Commission most recently took action under the FTC Act against a purported nonprofit organization in the case entitled *FTC* v. *Voices for Freedom,* a case that charged a company and its officers with allegedly misleading con-

sumers into buying nickel-plated copper bracelets with the inscription, "Operation Desert Shield, A Call for Freedom."

According to the Commission's complaint, consumers paid money for the bracelets with the understanding that proceeds would go to support a message center for American troops involved in the Persian Gulf war. The Commission alleged that Voices for Freedom was not in fact a nonprofit entity. The Commission claimed that, contrary to the respondents' representations, few contributions actually were allocated to the stated charitable purpose, and that the defendants used the money for their own benefit.

To settle the Commission's suit, Voices for Freedom and its officers signed a consent agreement. This consent decree required them to pay $120,000 in consumer redress.

In closing, the Commission recognizes that telemarketers may be establishing shells in an attempt to take advantage of loopholes in State telemarketing statutes or in an attempt to take advantage of the Commission's limited jurisdiction under the FTC Act.

The Commission understands that Nevada, and particularly Las Vegas, have experienced a profusion of telefunders who may be involved in deceptive solicitations. To combat this problem the Commission and its staff are committed to working closely with he Nevada Attorney General Frankie Sue Del Papa and her staff. Only through such State and Federal cooperation can effective law enforcement action be taken in this area.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Klurfeld follows:]

PREPARED STATEMENT OF JEFFREY KLURFELD

Mr. Chairman and members of the Committee: My name is Jeffrey Klurfeld and I am Director of the San Francisco Regional Office of the Federal Trade Commission. I appreciate this opportunity to appear before you today to testify on behalf of the Federal Trade Commission regarding questionable solicitations of charitable contributions, especially those solicitations done by professional telemarketers. The views expressed in this testimony represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

Let me begin by saying, Mr. Chairman, that the Commission shares your concern that unscrupulous individuals and their organizations fraudulently solicit money from consumers who believe that they are contributing to worthy charitable causes. Government can and should play a strong role in preventing and stopping such practices, but the Commission cautions that Congress should guard against imposing on the conduct of charitable organizations so many restrictions and proscriptions as to stifle the effectiveness of genuine charities.[1] The Commission shares your deep concern over possible deceptive or fraudulent charitable solicitations. The statutory limits on the FTC's jurisdiction over not-for-profit organizations, however, restrict the Commission's authority with respect to most charities. Sections 4 and 5 of the Federal Trade Commission Act ("FTC Act") provide the Commission with jurisdiction only over corporations organized to carry on business for their own profit or that of their members.[2]

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[1] According to the Annual Report of the American Association of Fundraising Counsel (AAFRC) Trust for Philanthropy, tax-deductible contributions have increased from $11.83 billion in 1962 to $124.31 billion in 1992. When one accounts for inflation, this represents a doubling in the last 30 years. (Giving USA: The Annual Report on Philanthropy for the Year 1992, 13 [1993]) In addition, a preliminary analysis of the 1990 census showed that approximately 6.2 per cent of the country's workers were paid employees in private, non-profit organizations.

[2] Section 5(a)(2) of the FTC Act states: The commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. §45(a)(2).

Section 4 defines "Corporation" to include: any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members * * * 15 U.S.C. §44.

This restriction was included in the FTC Act as enacted in 1914, and every version of the Act considered by the 63rd Congress contained a similar restriction. On the other hand, although the legislative history does not contain a detailed explanation of the provision, it makes clear that Congress was not enacting a blanket exemption for all non-profit corporations. In August 1914, Joseph Davies, Commissioner of the Bureau of Corporations (the FTC's predecessor), wrote to Senator Newlands, Chairman of the Committee on Interstate Commerce and author of the Senate version of the Act, that because the bill then being considered would exempt all non-profit corporations from the Commission's jurisdiction,[3] many trade associations would be exempt from the Commission's jurisdiction, Commissioner Davies explained that manufacturers may use these trade associations to restrain trade.[4] Congress thereafter amended the non-profit exemption of Section 4 by expanding the definition of "corporation" to include organizations carrying on business for the profit of their members.

Over the years, federal courts have construed Section 4 to bar the Commission from suing any truly non-profit organization under the FTC Act, thereby removing many, if not most charitable organizations from the FTC's scope of authority.[5] At the same time, however, the courts have held that the Commission must determine its jurisdiction under the Act on a case-by-case basis and that the mere form of an organization's incorporation does not place it outside the authority of the Commission.[6] Therefore, the Commission has jurisdiction over a non-profit organization that is merely an instrumentality or a shell used to seek direct monetary gain, either for itself or for its members.[7] The Commission also has jurisdiction over a non-profit entity that pursues profit for its members indirectly—for instance, when an organization promotes the consumption of products sold by its members. This was the basis for the FTC's jurisdiction in its suit against the National Commission on Egg Nutrition, a nonprofit corporation owned by egg producers and organized to advertise the nutritional benefits of eggs.[8] Finally, even when a non-profit organization serves mixed non-profit and for-profit purposes, the FTC may have jurisdiction. For example, the Commission found jurisdiction in a case against the American Medical Association. A federal court affirmed, saying that the Commission had jurisdiction over activities that benefit members' business interests, "even if they are considered secondary to the charitable and social aspects of [the non-profit corporation's] work."[9]

Not only does the Commission face statutory obstacles in taking action against some non-profit organizations, the Commission is limited in its ability to take action against fraud or deception based on the sole fact that a large percentage of a charity's donations are used to defray fundraising costs. In *Riley* v. *National Federation of the Blind of North Carolina,*[10] the Supreme Court held that fundraising for charities is fully protected speech under the First Amendment. The Court struck down a state statute that required a charity to prove the reasonableness of using over 35 percent of its collected donations for fundraising expenses. It is not clear whether this decision would preclude a suit alleging that the allocation of a high percentage of funds collected in the name of the charity to defraying fund-raising costs, such as direct-mail or telemarketing efforts, constitutes an unfair act or practice under Section 5 of the FTC Act or under similar state statutes.

Against this background relating to the FTC's authority, we now address your particular concern relating to telemarketing done in the name of charity—what some people call "telefunding." As stated at the outset, the Commission shares the Committee's concern that telemarketing scams may be infiltrating the non-profit sector. The Commission especially shares the concern that telemarketers may be setting up "false" charities to hide their fraudulent money-making operations.

The complaints concerning charities that come to the Commission tend to focus on the following consumer concerns: (1) misrepresentations about the amount or percentage allocated to a specific charitable purpose; (2) misrepresentations about the types of charitable programs, if any, that an organization runs; (3) "copycat" names that mislead donors into believing that they are giving to a well-known es-

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[3] S. 4160, 63rd Cong. 2d Sess., quoted at H.R. Rep. No. 1142, 63rd Cong., 2d Sess. 11 (1914).

[4] This letter is quoted in *Community Blood Bank of Kansas City Inc.* v. *FTC,* 405 F.2d 1011, 1017-18 (8th Cir. 1969).

[5] See *Community Blood Bank of Kansas City Inc.* v. *FTC,* 405 F.2d 1011 (8th Cir. 1969).

[6] Id. at 1018.

[7] Community Blood Bank, 405 F.2d at 1019; Ohio Christian College, 80 F.T.C. 815 (1972)

[8] *FTC* v. *National Commission on Egg Nutrition,* 517 F.2d 485 (7th Cir.), cert. denied, 426 U.S. 919 (1975).

[9] *American Medical Ass'n* v. *FTC,* 94 F.T.C. 701, 982-93 (1979), aff'd, 638 F.2d 443, 448 (2d Cir. 1980), aff'd mem. by equally divided court, 455 U.S. 676 (1982).

[10] 487 U.S. 781 (1988).

tablished charity; (4) misleading statements about the caller's affiliation with a charitable organization; and (5) sweepstakes or prize promotions requiring consumers to contribute to a purported charity in order to win a prize.

To assess these complaints, the staff of the Commission regularly works with several public and private organizations and several "watchdog" or oversight organizations within the private, non-profit sector itself. For example, the Better Business Bureau's Philanthropic Advisory Service ("PAS") collects complaints regarding charities and publicly confirms the existence of these complaints in response to any inquiries. The PAS also obtains information from charities regarding their purposes, governing structures, programs, accounting procedures, and fundraising practices and makes this information available in response to inquiries about particular charities. PAS also measures the performance of charitable organizations against its internally developed standards, which in part require that no more than 35 percent of contributions received be used for fundraising.

The National Charities Information Bureau ("NCIB") also has established standards of review of charitable organizations and serves as another source of information for the staff of the Commission. NCIB also monitors consumer complaints and, upon request, provides information about particular charities. Both the NCIB and PAS periodically issue industry-wide studies that provide valuable background information to the Commission.[11] In addition, the American Association of Fund-Raising Counsel ("AAFRC") annually publishes useful data on charitable giving, broken down by types of charities and donors.

State charity officers are another invaluable source of information and advice. Many states vigorously combat deceptive practices under state charitable solicitation statutes. Many states also compile data on individual charities and fundraisers who are required to file documents under state registration statutes. State attorneys general, secretaries of state, and consumer affairs officials have provided the staff of the Commission with tax forms, registration documents, mail solicitations, telephone scripts, and court papers relating to suspicious fundraising for non-profit groups.

At the federal level, the Commission may draw on the knowledge and cooperation of the Internal Revenue Service ("IRS") and the U.S. Postal Service, both of which have authority to investigate and prosecute charities. The staff of the Commission often turn to the IRS to determine if an organization has tax-exempt status and considers the IRS's tax-exempt determination in deciding if an entity is truly a non-profit organization. This is important in determining whether the Commission has jurisdiction over an apparently non-profit organization.

The IRS also plays an important role in monitoring deceptive charitable solicitations through its Exempt Organization Ruling Branch. The IRS has authority to confer tax-exempt status on a charity, usually under Section 501 (c)(3) or (c)(4) of the Internal Revenue Code.[12] At the same time, the IRS has authority to revoke a tax exemption if it learns that an organization is actually a for-profit business. The IRS recently exercised its authority to revoke a tax exemption in its much publicized case against United Cancer Council ("UCC"). The revocation was challenged by UCC and the case is now before the U.S. Tax Court.[13] The IRS has alleged that UCC operated, not for charitable purposes, but for the private monetary benefit of its professional fundraiser.

The Postal Service, through its regular review of applications for non-profit mail, also may provide evidence that the Commission uses in considering whether an organization is a non-profit entity. In addition, the Postal Service may examine deceptive solicitations directly under the False Representation and Lottery Statute, 39 U.S.C. Section 3005, and the Mail Fraud Statute, 18 U.S.C. Section 1341. In 1989,

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[11] PAS, for example, recently commissioned a nation-wide Gallup Poll that confirmed a drop in consumer confidence toward non-profit organizations. The same poll found that Americans saw the need for greater regulation of charitable solicitations, although not necessarily through government action. The Gallup Organization, American Attitudes Regarding Regulation of Charitable Organizations (Sept. 1993) (Commissioned by the Council of Better Business Bureaus, Inc.)

[12] 26 U.S.C. § 501(c)(3)-(4). If an organization is approved under 501(c)(3), its related business income is tax-exempt and donors' contributions are tax deductible. If an organization such as a lobbying group is approved as 501(c)(4), its related business income is tax-exempt but contributions are not tax deductible.

[13] The IRS revoked UCC's tax-exempt status on Nov. 2, 1990, retroactive to June 11, 1984. At the same time, the IRS issued a notice of deficiency concerning UCC's income tax for 1986 and 1987. See *United Cancer Council, Inc.* v. *Commissioner of Internal Revenue,* Docket No. 2008-91X (T.C. January 30, 1991) (petition for declaratory judgment); 100 T.C. 11 (March 11, 1993) (denying UCC's motion for summary judgment). See also, *United Cancer Council, Inc.* v. *Commissioner of Internal Revenue,* Docket No. 2009-91 (T.C. January 30, 1991) (petition to review notice of deficiency).

for example, the Postal Service entered a consent agreement with a for-profit fundraiser, Watson and Hughey, as well as its charity-client Cancer Fund of America, and Robert Stone. The consent agreement prohibits certain misrepresentations in charitable solicitations and requires the respondents to notify consumers of their right to a refund if they did not find Cancer Fund of America to be a proper steward of donations.[14]

The staff of the Commission has received cooperation from many of the groups just discussed. For example, staff of the Commission recently was invited to attend the Charitable Trusts Solicitations Seminar, sponsored by the National Association of Attorneys General and the National Association of State Charity Officials. The staff of the Commission attended and met with state officials, IRS representatives, charity or foundation officers, fundraising counsel, professional solicitors and private attorneys. Both in closed-door sessions with other law enforcement officers and in open sessions with representatives from the private non-profit sector, the staff of the Commission participated in informative discussions about growing problems concerning so-called charitable fundraising, recent law enforcement actions and evolving accounting standards, seminal court decisions, and emerging industry trends.

The Commission most recently took action under the FTC Act against a purported non-profit organization in FTC v. Voices for Freedom,[15] a case that charged a company and its officers with allegedly misleading consumers into buying nickel-plated copper bracelets with the inscription, "OPERATION DESERT SHIELD [later DESERT STORM]—A CALL FOR FREEDOM." The Commission filed a complaint alleging that respondents had solicited consumers by mail, phone and through a call-back 800 number. According to the Commission's complaint, consumers paid $9.95 to $11.45 for the bracelets with the understanding that proceeds would go to support a message center for American troops involved in the Persian Gulf War. In addition, according to the complaint, consumers were induced to accept charges on expensive "collect" telephone calls after solicitors from Voices for Freedom allegedly misrepresented that they were calling in some official capacity with the Desert Shield/Desert Storm Operation.

Just before the Commission's complaint was filed, Voices for Freedom obtained 501(c) (3) tax-exempt status from the IRS. Although interpretations of the Tax Code by the IRS often are useful, they are not controlling. The Commission independently asserted its jurisdiction under the FTC Act, and alleged that Voices for Freedom was not in fact a non-profit entity. The Commission claimed that, contrary to the respondents' representations, few contributions actually were allocated to the stated charitable purpose, a Desert Shield/Desert Storm phone message center. Instead, as alleged in the Commission's complaint, the defendants used the money for their own benefit.

To settle the Commission's suit, Voices for Freedom and its officers signed a consent agreement that, among other things, bars them from misrepresenting the non-profit nature of an organization, or putting certain "blocks" or "holds" on consumers' credit cards. The consent decree also required them to pay $120,000 in consumer redress. The Commission also entered into a consent agreement with Phone Base Systems, Inc., the firm that had allegedly acted as the telecommunications service bureau for Voices for Freedom.

The Commission typically brings deceptive solicitation cases under Section 5 of the FTC Act, as it did in Voices for Freedom. Other Acts of Congress enforced by the Commission do not contain the same exemptions for non-profit organizations. For example, the Commission enforces sections of the Consumer Credit Protection Act,[16] including the Truth in Lending Act,[17] the Fair Credit Reporting Act,[18] the Equal Credit Opportunity Act,[19] and the Fair Debt Collection Act.[20] Like the FTC Act, each of these acts prohibits "unfair or deceptive practices," but none of these credit statutes prohibits the Commission from taking action against a non-profit corporation. On at least one occasion, the FTC has enforced the Fair Debt Collection Act against an alleged non-profit entity.[21]

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[14] In the Matter of the Complaint Against Cancer Fund of America, Robert R. Stone, Watson and Hughey, Byron C. Hughey, and Jerry C. Watson, Postal Service Docket No. 33/186 (June 20, 1989).

[15] Civil No. 91-1542-A (E.D. Va., July 13, 1992) (consent decree entered).

[16] 15 U.S.C. §§ 1601 et seq.

[17] 15 U.S.C. §§ 1601–1614.

[18] 15 U.S.C. § 1681.

[19] 15 U.S.C. § 1691.

[20] 15 U.S.C. § 1692.

[21] See *FTC* v. *Don H. Sly,* CV 81-H-427-E (N.D. Ala. 1982) (reported in 16 F.T.C. Court Decisions 219), aff'd without opinion, 729 F.2d 1466 (11th Cir.), cert. denied, 469 U.S. 832 (1984).

In closing, the Commission recognizes that telemarketers may be establishing shells in an attempt to take advantage of loopholes in state telemarketing statutes, or in an attempt to take advantage of the Commission's limited jurisdiction under the FTC Act. The Commission understands that Nevada and particularly Las Vegas have experienced a profusion of telefunders who may be involved in deceptive solicitations. To combat this problem, the Commission and its staff are committed to working closely with Nevada Attorney General Frankie Sue Del Papa and her staff. Only through such state and federal cooperation can effective law enforcement action be taken in this area.

Senator BRYAN. Thank you very much, Mr. Klurfeld. We will have some questions of you at the conclusion of this panel.

Now we are going to call upon Mr. Bill Henderson. This is where the rubber meets the road. Mr. Henderson is the executive director of the Better Business Bureau. We appreciate you joining us this morning.

STATEMENT OF WILLIAM HENDERSON, EXECUTIVE DIRECTOR, BETTER BUSINESS BUREAU, SOUTHERN NEVADA

Mr. HENDERSON. Good morning, Mr. Chairman. I am Bill Henderson. I am chief executive officer of the Better Business Bureau here in southern Nevada.

As you know, the Better Business Bureau is an organization of business whose mission is to foster ethical business practices in the marketplace, and I thank you for giving us the opportunity to be here this morning to talk about something that we are concerned here in this community about, and that is the telemarketers who solicit funds for charities.

We have labeled these firms telefunders because they are not really charities but businesses in business to make a profit. Out of the moneys collected in the name of charity, only a small percentage may actually go for the charity.

The question is, Are these telemarketers to be given the same protection under the law as charities? It is my belief that there is a vast difference between a telemarketing firm raising funds and a charity.

Regulations, of course, became necessary some time ago against telemarketers because they were offering valuable prizes if the consumer would just buy one of their products. Exempt from these laws here in Nevada are nonprofit organizations.

The calls that we are receiving from across the country about the charity solicitation appeal indicates the consumers being asked to contribute to a charity with a promise that they will receive a fabulous prize. Under the Federal law, the promise of a prize with payment in advance is a lottery, and these firms are not operating—if they were not operating as charities, would there not be some action by the Government?

Many callers indicate they had previously purchased from telemarketing firms operating out of Las Vegas. One elderly lady from Ft. Worth sent us the names of 12 telemarketers from whom she had purchased in the past year. This same lady was asked to donate $73,000, $38,000 or $18,000.

We understand that a number of former telemarketers, of course, are now operating in those charity telephone appeal rooms. Under our law telefunder solicitors for nonprofit organizations are exempt from the law.

The vast majority of the calls that we receive are from the elderly. A letter just received Friday states the pattern very well. The lady says:

> We have a big problem. We have been watching A Current Affair on television and they have a program called "Gotcha" and it has been focusing on the con organizations in this country. In Las Vegas you have many of them, I am sure, but one of them has really come after us. We are 84 and 86 years of age.
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> We have really lost a lot according to our small retirement income. We think it is $3,300. We hope you can help recover at least part of our loss. We really need this money to buy food and medicine. Why are the elderly people being treated this way?

Another lady from California wrote stating that she had been called and told she was a finalist in a $50,000 VIP promotion and all they wanted was a $4,500 donation so she could get the prize. They reduced that to $1,000 when they found out she did not have it.

I just would like to read the letter from a lady from Colorado which shows kind of the extent to which at least one solicitor went to get this lady's money. I am going to read it:

> I had about five calls from this organization, it is a charity organization, and hung up every time. Each time someone different called back. Then I received another call and I said I had already been called and hung up. He called right back and said, "How come you hung up when I am trying to give you the top prize?" He knew all about my problems with other Las Vegas marketing outfits and said they were not about to let me be taken again. If I donated $1,562 to this charity they would give me the top prize, and up it from $30,000 to $50,000.
>
> I wired the money by Western Union. They sent me a thank you letter and a receipt to deduct the contribution from my income tax. Later they called me back and said the check would be sent to me but I had to pay the tax on it first of $2,000. It cost another $90 for the cash advance. They called to say that they had received it, and to congratulate me again.
>
> The next day they called to say they had a meeting and had upped the prize to $80,000, so I would need to pay an additional $1,396 which cost me an addition $75 for the advance. They said to expect my prize check of $80,000 in about 3 to 5 days. After the 5 days I realized that I had been taken again. I am sure everyone wonders how anyone could be so gullible, but when you are in a desperate financial situation and see a chance of light at the end of the tunnel—it is obvious that we are easy for them.

Telephone charity appeals have been around for many years but the twist that I believe we need to address is the giveaway or prize promised for donating, and whether for-profit firms who solicit on behalf of charity should be exempt from established telemarketing laws.

Should not the telemarketing firm at least be required to voluntarily disclose that they are not working directly for the charity but a firm hired to solicit? I believe that since the telemarketer is requesting money from a charity there should be a direct accountability to the public that they are soliciting. Is there also not an accountability to the public by the charity?

There is no question that some of the charities would be out of business or in dire financial straights without these funds, and undoubtedly the monies that finally reach the charities go for good work.

I believe the price the elderly in this country are paying is just too high. In many cases the problem created may be worse than the help the donation gives.

Thank you very much.

[The prepared statement of Mr. Henderson follows:]

PREPARED STATEMENT OF WILLIAM D. HENDERSON

I am Bill Henderson, chief executive officer of the Better Business Bureau of Southern Nevada. The BBB is an organization whose mission is to foster ethical practices in the marketplace. I thank you for the opportunity to be here today since we are concerned about the business practices of some telemarketers who solicit funds for charities. We have labeled these firms "telefunders" because they are not charities but businesses in business to make a profit. Out of the moneys collected, in the name of a charity, only a small percentage may actually go to the charity.

The question is, are these telemarketers to be given the same protection under the law as charities? It's my belief that there is a vast difference between a telemarketing firm raising funds and a charity.

The telefunding industry in Las Vegas has flourished since June 1993. That was about the time the Nevada State telemarketing law was changed, the new law puts enforcement under the control of the State attorney general. It requires a registration fee of $6,000 and a bond of $50,000. Exempt from the provisions are nonprofit organizations.

As you may be aware, regulations became necessary when some telemarketers were promising fabulous prizes if the consumer would purchase their products.

The calls we are receiving about the charity solicitations appeal, to individuals across the country, indicate the consumer is asked to contribute to a charity with the promise they will receive a fabulous prize. Under Federal law the promise of a prize with payment in advance is a lottery and if these firms were not operating as charities would there not be some action by the Government?

Many callers indicate they had previously purchased from a telemarketing firm operating out of Las Vegas. One elderly lady from Fort Worth sent us the names of 12 telemarketers from whom she had purchased in the past year, the same lady was asked to donate $73,690, $36,845, or $18,422.

We understand that a number of former telemarketers are now working in the charity appeal telephone rooms. One of the reasons this may be is that the telemarketing law now requires telephone salespeople to pay $100 to register and the telemarketing firms they work for are required to supply names of their telephone solicitors to the State. This helps to make the telephone solicitor responsible for their own actions as they go from the company to another. Telefunder solicitors for nonprofit organizations are not regulated.

The vast majority of the calls we receive are from the elderly. A letter received just Friday states the pattern very well. "We have a big problem. We have been watching Current Affair on TV. They have a program called 'gotcha' and its been focusing on the con organizations in this country. The FBI is really catching them and getting the money taken from poor retirees. This is really a crime old people are the targets. In Las Vegas you have many of them I'm sure but one of them really came after us (we are 84 and 86 years of age.)

"We have really lost a lot according to the small retirement income. We think $3,300. But we can only find checks which were canceled for $2,300. Our last $1,000, sent to them left us with a balance in our checking account of $200. They seemed to be such nice and dependable people, we believed them. We were to receive several thousand dollars. We hope you can help recover at least part of our loss. we really need this money to buy food and medicine. Why are the elderly people being treated this way?"

A person from California wrote stating she had been called and told she was a finalist in a $50,000 VIP promotion and wanted $4,500 donation so she could get the prize. When she told them she could be considered one of the needy and could not afford it, the caller told her, "a $1,000 donation would work, the caller stated he just come from a board meeting and everyone was so excited that she was a big winner."

Another letter shows the extent to which one telephone solicitor will go to get donations.

[This letter may be found in the committee's files.]

Telephone charity appeals have been around for many years, but the twist that I believe must be addressed is the giveaway or prize promise for donating and whether for-profit firms who solicit on behalf of charities should be exempt from established telemarketing laws.

Should not the telemarketing firm, at least, be required to voluntarily disclose that they are not working directly for the charity but a firm hired to solicit funds?

I believe that since the telemarketer is requesting money for a charity there should be direct accountability to the public they are soliciting. Is there also not an accountability to the public by the charity?

There is not question that some of the charities would be out of business or in dire financial straits without these funds and undoubtedly the moneys that finally reach the charity go for good work, but I believe the price the elderly are paying is too high. In many cases, the problem created may be worse than the help the donations give.

Senator BRYAN. Thank you very much, Mr. Henderson.

Let me begin with Ms. Rausch if I may, and make sure that we have Nevada law in perspective. Under your new legislation I take it that charitable solicitation is exempted or excluded from the other operational provisions of that law. Do I understand that correctly, Ms. Rausch?

Ms. RAUSCH. Yes. The Nevada telemarketing law was set up, as you mentioned in your introduction, to regulate the sale of goods and services by telephone. And the area of charities is really a specialized area and other States have specialized laws due to constitutional concerns in that area as opposed to just the sale of goods or services by phone.

Senator BRYAN. May I take it that the attorney general is going to be proposing legislation in the next session of the legislature dealing more specifically with the telefunding issue?

Ms. RAUSCH. Right now what our office is doing is working with the Better Business Bureau, who is providing a lot of excellent statistics for us, working with other law enforcement in other States to get a handle on what the State of Nevada can do, and also we have an excellent vantage point to look at what other States are doing, what has succeeded there, what has passed constitutional muster. We will be able to draw from that and see what the State can do.

Senator BRYAN. And you have indicated that there are other States that do have model charitable solicitation legislation to deal with this issue?

Ms. RAUSCH. Right. States like Michigan, Massachusetts, and Pennsylvania have been very active for a number of years and they have a lot of experience in the area.

Senator BRYAN. As you know, the telemarketing legislation which I drafted and introduced specifically provides for expanded power for State attorneys general part to file under the FTC. Do you have any recommendations or suggestions as to what we might do at the Federal level to help the States deal with this telefunding issue in terms of any Federal legislation or something that the Federal Trade Commission might be able to do to supplement your own efforts at the State level?

Ms. RAUSCH. As far as legislation, personally I think that any legislative body is very cautious when combining charitable solicitation and telemarketing law. They are really two different animals, and we need to look at the different concerns in that area.

And I think, as I mentioned in my presentation, any consideration given needs to keep in the mind the States, as you did in your Federal telemarketing bill. Give the States ability to go in and not preempt our authority.

The FTC—we have been working with the FTC on a couple of cases, and there are certain areas that they can get into. It is just if you have five different MO's, we may only be able to hit two, you know, those that really go into the egregious areas, but that is bet-

ter than nothing. And those other areas are really something that is going to take a lot of time to evaluate.

Do we need to get into that? Is that something we should get into or just something that maybe we should work with the charities in tightening up their ability to regulate themselves? You cannot really have one way to handle all the different areas that these groups are doing.

Senator BRYAN. On the various permutations of the charitable fraud problem, with respect to an organization which just blatantly misrepresents itself, that they are calling on behalf of X charity and they have no viable 501(c)(3) exemption that they are operating under, and they are in fact not in anyway connected with the organization, the most blatant form of misrepresentation, under the existing law even though they masquerade as charities do you have the ability to act under the current telemarketing law or some type of deceptive trade practice act?

Ms. RAUSCH. I am sure there is enough law out there, just common law or the laws regarding obtaining money under false pretenses. There is enough law out there to get those egregious cases. It is when you get into the middle, the gray area, that we have to evaluate it. But right now those groups out there that are committing outright fraud are not going to be protected. Between the Federal agencies and States there is plenty of law out there.

Senator BRYAN. Ms. Rausch it might be helpful for us if you could kind of categorize those gray areas. We have taken the most extreme case that you do have the ability to act upon, but now how about someone who is filing under a name that they have a 501(c)(3) permit or exemption, but in point of fact is using the similarity.

They are not using the actual name of the well-established or recognized charity, but it is so close that people are clearly under the impression that they are giving to an established charity, whether it is cancer, March of Dimes, whatever it happens to be. What authority do you have in those cases under the existing State law?

Ms. RAUSCH. Depending upon the practices there may be help under the deceptive trade practices law. For example, in the area where it was so close that you are deceiving the public into believing that you are that charity, there may be some relief in that area.

Senator BRYAN. Now, I take it that some of these charitable solicitations do not involve a quid pro quo. Not all of the telefunding is suggesting that you are going to get a prize, as Mr. Henderson gives us the graphic example of the person who was hit several times, but some just simply make an outright pitch for a contribution to flood victims of the Midwest or whatever it is.

Can you give you us some sense, in terms of the kinds of problems that you deal with, of the frequency of that type of charitable solicitation?

Ms. RAUSCH. A lot of times what we are seeing, and I am sure the FBI and the metro police department are seeing, is you get groups who come up whenever there is some sort of a tragedy, during the gulf war or during the earthquake in San Francisco, or whenever there is a tragedy they are there.

Unfortunately some of these people just simply set up shop, make phone calls, get the money through Western Union, and skip town. I do not know what anybody really can do about that. You may get a handle on them if you are lucky, you may get tips, maybe the same people that you have seen before that you can track down. That is a real difficult area.

Senator BRYAN. Ms. Rausch, I thank you. Mr. Prillaman, I know that you have got to go to the swearing in of the new U.S. Attorney, so let me be specific.

In your prepared testimony you indicated a number of areas that you are suggesting are appropriate for concern. May I take it that with respect to these 10 specific proposals, that in your view we do not have the ability under existing law to address that?

For example, one of the items you suggest is the use of aliases in telephone solicitation should be prohibited. I take it that there is nothing that you have available to you under the Federal law that would enable some agency of the Federal Government to prohibit that practice.

Mr. PRILLAMAN. You possibly could apply Federal law to it, but it would be easier if we had some specific legislation.

Senator BRYAN. In terms of your own perspective, what would be the most important thing we could do at the Federal level to provide the kind of assistance that you would need working with State attorneys general and local consumer affairs organizations? What specifically can we do for you?

Mr. PRILLAMAN. Well, as I stated earlier in my prepared text, it appears that so many of the victims are out of State, and it also appears that we have such a limited number of them that will come forth because, frankly, they are embarrassed to acknowledge that they have been had.

It seems to us from our experience at the Federal level, and I know sometimes it is a sensitive area, but in the area where we can be successful is the forfeiture provision. If the telemarketers, if we can prove their culpability in the crime—now we usually have to use the money laundering statute and other statutes to apply the forfeiture provision.

It appears to us with the fraudulent activity and the money being the driving force, would be a strong forfeiture provision which would come with any new legislation because I truly believe if you can apply that, and then use the funds that you seize or the assets that you seize and then use that as a means to pay back some of the victims, that would be very helpful.

As I stated, it is an extremely complex investigation to conduct. Unfortunately, you have parts of the investigation taking place here in the State of Nevada with the solicitation, and then the victims are throughout the country.

I think with what we are trying to do with the attorney general's office as well as attorney general's offices in the other States is coordinating all of our efforts and ensuring that there are the necessary statutes in the States that help us at the Federal level. I think we can get a handle on it.

But the unfortunate thing is we will never get the victims to come forth in a timely manner that can allow us to take the actions possibly as quick as we could.

I know you mentioned earlier the awareness issue, and I think that is one that if you are able to stress that, if it is able to get across the Better Business Bureaus and attorney generals offices and so forth, that would be very helpful. But outside of that, I think what we are doing hopefully helps in some ways, but sometimes we feel like we have got the finger in the dike and are not really being as effective as we would like to be.

Senator BRYAN. Mr. Prillaman, there are really two approaches that we can take here at the Federal level. One is to change the criminal Federal code to more specifically address some of these concerns. And the other we are going to get with Mr. Klurfeld in his round of questions, to do something with respect to the FTC.

Now, that does not exclude or preempt the attorneys general. As Ms. Rausch pointed out, our legislation is designed to work in tandem with States attorneys general and provide them increased authority.

We welcome any of your specific suggestions. I know that you have got to get down to the swearing in, but that would be important.

Senator Hatch, as you know, has introduced a piece of legislation that deals with the criminal provisions, and we have been supportive of that, and we are working through my committee in a bipartisan fashion. Senator McCain has been one of the principal cosponsors of this telemarketing legislation that we are working on and the ranking member, Senator Slade Gorton, has been very supportive as well. So, it is a bipartisan effort and we want to work together with you.

Let me just say before excusing you that we had a chance to meet with some of your agents in my office in Washington on the Operation Disconnect. That was an incredible effort.

For those that may not be familiar with it yet, the Bureau was able to literally penetrate into the organization itself and to listen to their strategy and how they targeted groups. I mean, it was absolutely a shameless performance of human nature at its very worse. People would chuckle about how they were able to make a pitch based upon a religious argument that would be made to somebody who they happened to identify as being very active in a religious community. It was just incredible—pretty callous.

Mr. PRILLAMAN. When we have had search warrants and things here, you really understand once you go in and you see the pitches that they make. You see pictures of the victims right there in front of them. You see all of the details concerning their family. They are very, very professional in the way they make their pitch and the way they can touch the right button to get someone's sympathy. So, we are dealing with a very sophisticated criminal element that is pretty difficult to penetrate sometimes.

Senator BRYAN. We thank you. You are excused, and wish Katherine Lamberth our best, would you?

Mr. PRILLAMAN. Thank you, sir.

Senator BRYAN. Mr. Klurfeld, at the Federal level, FTC, let us talk a little bit about the limitations that you face. I take it that like the attorney general you have the ability where it is clear that it is fraud, although masking as a charitable solicitation, to do

that, that sections 4 and 5 do not preclude you from taking action in those areas?

Mr. KLURFELD. Yes, sir, that is correct. To the extent that it is, in reality, masquerading as a bona fide nonprofit organization we can pierce that nonprofit veil, to the extent that the profit is really inuring to the benefit of the members of the organization.

Senator BRYAN. The legislation which I have introduced with Senator McCain and others is sufficiently broad that it does give the Federal Trade Commission the power to enact regulations pursuant to those purposes.

Is that legislation, in your view, sufficiently broad that you would have the ability within your constitutional limits to devise regulations that deal with this specific category of fraud; namely the charitable solicitation fraud?

Mr. KLURFELD. I think to the extent that any regulation that the Federal Trade Commission were to promulgate pursuant to that act that would be in variance with the statutory authority of the Federal Trade Commission, specifically sections 4 and 5, it may not be permissable because such a regulation would contravene the Federal Trade Commission Act.

However, there are definite features of the bill that do provide us with an expanded arsenal of weapons, and we applaud this effort, including the enlargement of subpoena authority, expanded laying of venue, and the ability for the Commission to bring its own criminal contempt actions, which we feel is very, very significant.

Also, the ability to issue subpoenas over physical objects, and also we believe that central to our efforts to attempt to condemn these so-called fronts would be the ability to obtain asset information of the defendants under an exemption of the Financial Privacy Act.

So, we definitely feel that there are significant features of that act which would improve our enforcement ability.

Senator BRYAN. Maybe it would be helpful if you would kind of break down the various categories within this charitable solicitation. We have already talked about the most extreme case in our discussions. Apparently you at the Federal level, and at the State level both have the ability to do that.

How about somebody who just simply falsely represents that they are with the particular charity? For example, they say—"I am calling for the Cancer Society"—but they are not with the organization at all. I take it that clearly is actionable under current law.

Mr. KLURFELD. That is correct, Mr. Chairman. To the extent that they were misrepresenting their affiliation with a bona fide nonprofit charity, they would not derive the benefit of the nonprofit exemption. They could not successfully invoke that themselves.

Senator BRYAN. And how about someone that had a 501(c)(3) exemption and used a name that was so similar, deceptively similar to another well-known legitimate charity. In other words, it is the American Cancer Foundation or something like that which people in their own mind assume, well, that is a group that I want to provide help for. I know about them. I have had a member of my family die of cancer or something like that. What kind of authority do you have in those circumstances?

Mr. KLURFELD. Well, first of all I would say, as a threshold matter, the fact that an organization enjoys a 501(c)(3) exemption is not dispositive on the Commission's being preempted in pursuing that investigation.

To the extent that we find that the exemption had been improperly granted, in the sense that it is not a bona fide nonprofit organization, we could pierce that exemption, notwithstanding that under the IRS regulations, even before the IRS decided to perhaps revoke the exemption, the organization was still ostensibly nonprofit.

To the extent that they are a copycat organization and that they are misleading the public through some deceptive similarity in names, we would have jurisdiction to pursue that.

Senator BRYAN. So, what you are saying is just because someone is using a charitable solicitation exemption or invokes charity as the object of the solicitation, that in and of itself does not preclude you from taking action. So, you can, to use your word, "pierce" that veil and move against them.

Maybe the reverse of that question—let me swing it around the other way. What types of activity, maybe if you can break this into categories, are you precluded in your view under the existing law from acting on?

Mr. KLURFELD. To the extent, again—maybe I should answer it in the negative by focusing on the indicia or the conduct of those who claim erroneously nonprofit status, and we are able to pierce that veil.

I would say initially that any charity that is engaging in the fraud, it is highly suggestive that, because it is fraud, that the profits are inuring to the benefit of the individual members of the organization. So, I think you have to start with that threshold. Other indicia would be commingling funds, and using the profits to solely benefit the principals.

Senator BRYAN. And are you saying in these two instances you would not have the authority to take action?

Mr. KLURFELD. No, in those instances we would.

Senator BRYAN. You would. So, let me be clear on that, Mr. Klurfeld. You are saying that—let us suppose it is a charity. They are soliciting, they are not deceptively similar, but they are collecting money, let us say, for victims of flood relief in the Midwest. And let us suppose that they have got this thing structured so that about 85 percent of the money actually goes to folks involved with solicitation and a small fraction does indeed go to the object. So, it has some ostensible claim of legitimacy and some of the money, very little goes to the flood victims—do you have the authority to take action in that circumstance?

Mr. KLURFELD. It is difficult to answer, and I am not trying to be evasive, but it is difficult to give a dispositive answer. The Commission always has jurisdiction to "investigate its own jurisdiction." So, to the extent that we were to conduct an investigation we would have the authority to inquire into how this ostensibly nonprofit organization actually operated.

I think the problem in perhaps prosecuting telefunding, deceptive telefunding, is that to the extent that they do claim that they are

a bona fide nonprofit organization, the burden is on the Commission to establish that they are not.

Senator BRYAN. Is that an unreasonable burden? I mean, obviously you do not want to get involved in regulating the world of legitimate charities, and that is not what this hearing is all about. But is that an unreasonable burden for you to meet as a threshold?

Mr. KLURFELD. I think that it would be difficult to answer that categorically. Certainly there are cases where we could efficiently investigate that. In other cases often these organizations have a somewhat Byzantine corporate structure. They have multiple layers and, indeed, perhaps even multiple nonprofit layers so that it would be difficult to respond that we could efficiently pierce that veil immediately.

I think the hallmark of this telemarketing fraud is that often by the time you wish to prosecute, the money has already been expended. It has been secreted. It is offshore. It has been basically dissipated. And I think to the extent that we are required to then show that we do have jurisdiction is an additional element of proof for us.

I think that when I look over the landscape of this type of fraud it is almost as if telemarketing fraud metastasizes. Several years ago these telemarketers were in so-called toner-phoner rooms. Then they evolved to oil and gas scams, then to rare coins, rare stamps, and now it seems to be—it is opportunistic.

Now the favored type of telemarketing fraud is telefunding, so the very people that were involved in an earlier fraud are now in it again, and the lesson we have learned is often we are too late, although we try to act with dispatch and alacrity.

Senator BRYAN. Mr. Klurfeld, I do not want to beat this into the ground but give me an example, if you will, a hypothetical in which the Commission cannot act because of sections 4 and 5.

Mr. KLURFELD. I think that the easiest example, and I hope this would be responsive to your question, sir, would be truly the bona fide charity where they are not operating for the pecuniary benefit of the members. This is certainly the vast majority of eleemosynary institutions who are truly engaged in these endeavors. To the extent that they have established that they are bona fide, the Commission cannot challenge the exemption.

There is a case which now is part of Commission law involving a community blood bank in Kansas City in which the Commission attempted to pierce the nonprofit veil. And I believe it was the circuit court that found that the corporation was indeed nonprofit. And I believe that in that opinion the Commission was even admonished that they had to respect that nonprofit status so that they could not go back and then attempt to sue the individuals who were physicians who were involved in operating the nonprofit entity.

Senator BRYAN. Mr. Klurfeld, can you give us the kind of conduct the community blood bank was involved with that promoted the Commission's actions? Exactly what were they doing that caused you to focus your efforts on them, if you recall? If you do not, you can supplement the record.

Mr. KLURFELD. I would be pleased to provide information later on that.

Senator BRYAN. So, as I understand, Mr. Klurfeld, before we get back to Mr. Henderson, you clearly have jurisdiction where it is blatant misrepresentation; that you, as does the attorney general, have jurisdiction with respect to the deceptively similar; but you believe that you may have jurisdiction, although it is a little closer thing, where 85 percent of the money is being spent by the folks that are involved in the solicitation and a relatively small percent is actually used for the object of the solicitation.

Mr. KLURFELD. I think for the same reason that Ms. Rausch alluded to, and I believe it is the *Riley* opinion—*Riley* v. *National Federation of the Blind of North Carolina,* 487 U.S. 781, 1988—a Supreme Court opinion, I think we would certainly have reservations to the extent that we were requested to challenge a charity solely where an inordinate proportion of the monies raised were used for simply fundraising activities.

Senator BRYAN. Thank you very much.

Mr. KLURFELD. Thank you.

Senator BRYAN. Mr. Henderson, what advice would you give to the public when they are solicited by a charity either in person or over the telephone? What kinds of questions should they ask?

Mr. HENDERSON. First of all, I do not think they should give by phone. I think they should ask the organization to send them something in writing. And that usually gets rid of those organizations that perhaps are here today and gone tomorrow. After you talk to some of the people I do, you want to just tell them to hang up and do not give.

Senator BRYAN. Disconnect the phone almost.

Mr. HENDERSON. I told somebody the other day that had been taken for $125,000 his best choice would be to call the phone company and have his phone disconnected. He said, you know, that is a good idea.

I think that the consumer should ask the question, what percentage of my money is going for the organization that you are soliciting for? I think the organization should answer the question, is this professionally raised money?

There is no question that if I call across the country and I say, I am Bill Henderson and I am calling from this particular charity, and I would like for you to reach down in your pocket and give us $100—that I do not think is really the problem. In some cases only a portion of that money does go to the—a very small percentage of that goes to the organization.

But I do think that in most cases they have got to get the consumer's attention, and that is with the promise they are going to get something for nothing.

Senator BRYAN. That is really the nub of it, even in charitable solicitation fraud.

Mr. HENDERSON. Absolutely.

Senator BRYAN. That something comes if you do this. Not only do you pay penance in terms of your duties of citizenship to help those who are less fortunate, but you also benefit personally. That really appeals to both of our senses of what we like to see in life.

Who can you call? Suppose someone gets a call, a solicitation from XYZ for some wonderful purpose. Who can the consumer call in southern Nevada to find out if it is a legitimate charity?

Mr. HENDERSON. We are about the only organization the people can call now, and we have set up a set of standards by which we judge the charity so that a certain amount of the money must go for the charitable purpose. But we are about the only organization.

And generally nationally, the Council of Better Business Bureaus has a philanthropic advisory service. Other than that, there are not many places that a consumer can call.

Senator BRYAN. So, in other words, if somebody this afternoon, their phone rings and they are just about ready to reach into their pocket and it sounds like something that they would really like to do, they could say I will get back to you and call the Better Business Bureau here in Las Vegas, and you could give them a heads up.

Mr. HENDERSON. Senator, many of them do that. We receive about 800 to 900 telephone calls a day, and there are right now—an awful lot of those are about the telemarketing-telefunding business.

Senator BRYAN. I confess that I watch very, very little television. But do you do PSA's, public service announcements that say, look, there is a lot of htis type of fraud going on—particularly when it seems to be hot and heavy. And maybe it is on an ongoing basis so there is no fluctuation. Maybe it is as heavy in July as it is the week before Christmas when everybody is kind of in a giving spirit.

But in effect, through the public service announcements try to make the argument that people ought to hesitate for a moment and get more information and check with the Better Business Bureau. Are you doing any PSA's around the community?

Mr. HENDERSON. Locally we are doing that. Locally, of course, between now and Christmas is the time that generally people start giving from their heart rather than their pocketbook. And nationally, I think all of these programs, the Gotcha and all of these programs that unfortunately hit on the very negatives, but they do get people to listen.

I was at a senior fair over the weekend and there were about 1,500 seniors there. And an awful lot of them were talking about the telephone solicitations, the way they are pitched to give money or their parents over in Illinois or wherever, how they have been contacted and relieved of an awful lot of their money.

So, I think there needs to be more of this, more public awareness, more public affairs shows that can show the problem.

Senator BRYAN. Well, I agree with you. We want to help the law enforcement effort both at the Federal level and at the State level, but the best solution is not to make that contribution unless you get the information and be sure and verify that it is a legitimate charity.

Mr. HENDERSON. That is true. One of the things that we are doing here in southern Nevada is a very formal process with the State's attorney general. As soon as we get a call that looks like it is fraud, we get in touch with the attorney general's office so that we can find out, and they can know right away, where the call is coming from and whether or not it is fraud.

And hopefully that will help us because the problem with elderly people that get the call or people that get the call, they forget after it has been gone for 3 or 4 weeks. If we can get to them right now

we think we may have a chance of at least making the law enforcement agencies aware of the problem.

Senator BRYAN. Mr. Henderson, we appreciate your attendance here, and obviously your involvement with the problem. Ms. Rausch, our best to Attorney General Frankie Sue Del Papa, who I know has been a real leader in this area, not only in the State of Nevada but at the national level as well. And Mr. Klurfeld, you are about ready to offer some further enlightenment for us, so let me give you a chance to make the last comment here.

Mr. KLURFELD. Thank you, sir. You were indeed clairvoyant.

I would just like to clarify one point that I made, and that was my citation to the community blood bank case which is an eighth circuit case. That case does establish the principle of what the Commission does have to establish in order to respect the nonprofit status. But the respondent in that matter was not engaged in deceptive telefunding. It was allegedly engaged, although the Commission was precluded in establishing this because of the nonprofit exemption, in alleged anticompetitive conduct which is the other side of our section 5 jurisdiction. And I just wanted to state for the record that there was no allegation of deceptive fundraising by that organization.

Senator BRYAN. Mr. Klurfeld, we thank you very much. We thank the panel for being here. And we will take a short recess before we begin our next panel which will consist of Mr. Garth Winckler, the president and chief professional officer of the United Way of Southern Nevada; Ms. Linda Smith, marketing and foundation director, Opportunity Village; Ms. Judith Mitchell, the executive vice president of the Nevada Division of the American Cancer Society; Capt. Mike Hood of the Highway Patrol, Sgt. Larry Duis of the Las Vegas Metropolitan Police Department; and former State senator and president of Connecting Point Computer Store, Mr. Ron Cook.

We will be in recess for about 5 minutes.

[A brief recess was taken.]

Senator BRYAN. As I indicated before the break, we have Mr. Garth Winckler, president and chief professional officer of the United Way of Southern Nevada; Ms. Linda Smith of Opportunity Village; Ms. Judith Mitchell, the executive vice president of the Nevada Division of the American Cancer Society; Capt. Mike Hood of the Highway Patrol; Sgt. Larry Duis of the Las Vegas Metropolitan Department; and Ron Cook, former State senator, as well as the owner of the Connecting Point Computer Store here in southern Nevada.

I think Ms. Smith is being interviewed by one of the news media, but we can begin. Mr. Winckler, if we could begin our discussion here on the second panel with you. And let me just say to each of the panelists, thank you for your participation this morning.

STATEMENT OF GARTH WINCKLER, PRESIDENT AND CHIEF PROFESSIONAL OFFICER, UNITED WAY OF SOUTHERN NEVADA

Mr. WINCKLER. Thank you, Senator. Senator Bryan and committee members, my name is Garth Winckler. I am the president and chief professional officer of the United Way of Southern Nevada. I

also serve as the ethics committee chair for the Las Vegas chapter of NSFRE, which is the National Society of Fund Raising Executives.

My testimony represents both United Way's and NSFRE's concerns over unethical and fraudulent fundraising practices by unscrupulous telemarketers and scam artists which really affect the ability of legitimate charitable organizations to raise needed dollars to provide services in our community.

I doubt that any charitable organization is more sensitive to the necessity for maintaining a positive public image than are local United Ways, serving hundreds of communities across the country. A little over a year ago, revelations about questionable executive compensation perks for the former United Way of America president caused many donors to lose trust in their local United Ways, resulting in fewer dollars available to support local human services.

I am pleased to be able to report that the problems at United Way of America have been fixed and the problem makers dispatched. Our campaign this year is doing very well, but we need to continually assure donors that their contributions are used efficiently and wisely to help people.

As serious as the United Way of America's situation was from an image point of view, the amount of a donor's contribution involved in questionable activities was extremely small. The typical United Way contributor gives $2 per week through a payroll giving plan, or $104 per year. Of that amount less than $1 is used to purchase services from United Way of America, and of that amount less than 2 cents—or less than 2 cents out of a $104 contribution—was involved with questionable practices. Overall, United Way's overhead costs are about 14 percent of the amount pledged.

I provide this information as a comparison to some telemarketing efforts in which only 8 to 10 percent of the total amount donated goes for a charitable purpose. Where the United Way scandal was aired in public and corrected, telemarketing firms conduct business in secret, without appropriate disclosure on the usage of funds, and currently goes uncorrected.

Recently, our United Way has received several inquiries from around the country into the operations of a telemarketer raising funds on behalf of a local organization called Street Wise Alive. The organization is a recognized 501(c)(3) not-for-profit corporation. It has a local voluntary board of directors who are concerned about kids and want to help keep kids away from gangs and drugs.

Unfortunately, these well meaning people entered into an agreement with a telemarketing firm to raise dollars to support Street Wise Alive. The telemarketer and the agency split the profits after expenses. The amount going to charity, based on information provided to the United Way, is about 8 percent of the amounts contributed.

Such a low amount going to charity is bad enough, but what also is offensive to United Way and to NSFRE and to legitimate charitable organizations are the practices used by the telemarketer to solicit those gifts. I was provided with sample scripts used by the telemarketers to solicit funds with Street Wise Alive. They are filled with unethical practices.

For example, the script three times says that Street Wise Alive is a Federal nonprofit organization, implying endorsement by the Federal Government and a nationwide program. The fact is that the services are only planned for Las Vegas, and the only basis for being a Federal nonprofit organization is the existence of a 501(c)(3) tax exemption.

Second, the script implies that 6,000 kids are actually receiving services. The real number is much lower. We were told that less than 200 members have been issued a membership card.

The script outlines the services which the organization would like to provide, and implies that these services are in fact happening and, in fact, few of these services are being provided.

The script indicates support letters exist from United Way, local community schools, juvenile court services, and the mayor's office. These support letters do exist, however, they were given in the context of supporting the agency's application for Government funding in 1990 and were not given for the purpose of running a telemarketing appeal.

The closing practice used in the script is also, in my opinion, unethical. It starts by getting the check number that the person is using—"I need to know this for my accounting department." I do not know of any accounting department that needs to know the check number being used.

It finishes in some cases by arranging for Federal Express pickup of the individual's check, thereby eliminating opportunity for people to check out the organization and/or change their mind.

The Council of Better Business Bureaus recently conducted a survey on how the public views charities. The results are contained in the September 21 issue of the Chronicle of Philanthropy.

When asked, "how concerned are you about the amount charities spend for fundraising and other expenses not directly related to the problem they are fighting," 49 percent said "they were very concerned," and 32 percent said "they were somewhat concerned." Furthermore, 75 percent of the respondents felt that standards for the percentage of contributions spent on promotions and fundraising were either very necessary or somewhat necessary.

Recently, the courts have held that charitable solicitation is a freedom of speech issue. Accordingly, regulating charitable solicitations is extremely difficult without confronting constitutional protection issues.

Many local charitable organizations feel that instead of trying to regulate the solicitations, increased emphasis—whether by government or by self-regulation—should be placed on standards of operation for not-for-profit agencies. Most of the problems I have observed happen in organizations where either the board of directors is not active or where individuals with vested economic interests, usually paid staff, have voting or decisionmaking powers.

United Way has started to accredit agencies which receive funding. I am pleased to report that none of the agencies we currently accredit and fund are involved with telemarketing or any other fundraising scheme which violates fundraising ethics.

NSFRE also has a code of ethical principles and standards of professional practice which provide a guideline for appropriate conduct by a professional fundraiser.

Self-policing efforts like those taken by United Way and NSFRE work well with legitimate organizations whose purpose is truly charitable in nature. However, they have no impact on scam artists and others who hide behind constitutional protections in order to rip off donors through deception and unethical appeals for support.

In the long run, legitimate charitable organizations and the entire voluntary sector, which is unique to our Nation, are threatened by these unethical fundraising practices, and I urge your action. And I thank Senator Bryan for his leadership and this committee for the opportunity to bring our comments forward today.

Senator BRYAN. Thank you very much, Mr. Winckler. We appreciate your presence here this morning, and we will have a chance to get into a round of questions after each of the panelists testifies.

It is my pleasure to welcome to our committee hearing this morning Ms. Smith who is involved in one of southern Nevada's charities. Good morning, Linda, nice to have you here with us.

STATEMENT OF LINDA SMITH, MARKETING AND FOUNDATION DIRECTION, OPPORTUNITY VILLAGE

Ms. SMITH. Good morning. Thank you. I am here representing Opportunity Village, which is celebrating its 40th year in the community and I am pleased to be here today.

My statement is quite short. Fraudulent charitable solicitations are damaging to legitimate fundraising in two ways. Monies raised for fraudulent purposes are siphoned from the limited donation pool that support legitimate concerns, and donors who are taken by dishonest fundraisers resent or mistrust future legitimate solicitations and give less or not at all.

Opportunity Village is directly threatened by this kind of fraud. Donations to our thrift stores are diverted by professional retail management companies who donate a minimal percentage of their revenues to charitable causes. Also, telemarketers abuse Opportunity Village's reputation by using our good name to sell show tickets or other questionable merchandise.

Opportunity Village receives no monetary support from these telemarketers, and the tickets and goods they do deliver are unusable or not worthwhile.

Nevada ranks 50th in the Nation, the bottom of the pile, for available State and Federal funds for the disabled. Opportunity Village has a $5 million annual operating budget and we raise 80 percent of those funds through our own productive efforts, through fundraising efforts and through our retail operation. Opportunity Village saves taxpayers $20 million a year.

Raising $4 million from this community when other legitimate charities are also campaigning for the same dollars is quite a challenge. Our funds are acquired largely through direct solicitation, work contracts, and special event fundraising.

I have three staff and a considerable amount is spent tracking down sleazy operators masquerading as philanthropic individuals or companies, and usually it is too late to track them down. They have already done their dirty deeds and cleared out of town with the dough. So, I am really pleased that this panel has come here today, and I thank you for the opportunity to be here.

Senator BRYAN. Thank you very much, Linda. We will get into some questions after the rest of the panelists. And we are pleased to have this morning with us Judith Mitchell representing the Nevada Division of the American Cancer Society, a well established and legitimate national charity that does good work in our community as well. Good morning.

STATEMENT OF JUDITH MITCHELL, EXECUTIVE VICE PRESIDENT, NEVADA DIVISION, AMERICAN CANCER SOCIETY

Ms. MITCHELL. Good morning. Mr. Chairman and members of the committee, my name is Judith Mitchell and I am the executive vice president for the American Cancer Society, Nevada Division, Inc. I represent the Nevada Division in the American Cancer Society, its 24 local units, over 80,000 volunteers, and 3,500 cancer patients who we serve annually.

During the past several weeks we have received numerous calls at our division office from concerned citizens in regard to organizations claiming to be associated with the American Cancer Society. We have also received calls in regards to organizations whose name, mission statement, and symbols closely resemble our own. The resemblance is so close that the public believes they are donating time, energy, and dollars to the American Cancer Society when in fact they are not.

Organizations entering the cancer field today are willing to exploit the good name and reputation of the American Cancer Society and other worthwhile, legitimate health organizations to raise money for questionable use.

For example, in 1989 according to one organization's own audit, of every dollar they spent 59 cents was used for management and fundraising, 35 cents for education, 3 cents surplus, 1 cent research, and 1 cent for patient services. This, by the way, only totals 99 cents.

Here is what they considered education—11 cents for postage, 8 cents for printing, 6 cents for mailing lists, 3 cents for mailing house, 2 cents for computer, 2 cents for counting the money, and 3 cents for other.

Use of donor dollars in this way is making it increasingly difficult for organizations who are trying to be stewards of the public trust to secure support for their programs. These look-alike and sound-alike organizations adopt names similar to the American Cancer Society and other reputable charities. Long-time supporters of the American Cancer Society and other worthwhile organizations often contribute in the mistaken belief that they are giving to the American Cancer Society.

If an organization can portray itself as one that shares the donor's concerns or his or her cause, then it can convince the donor to support it. A recent article in the Las Vegas Review Journal clearly illustrated this problem. The article addressed the growing number of telefundraiser scams occurring throughout Nevada.

The September issue of the Las Vegas Chamber of Commerce newsletter, The Open Door, also contained an article regarding fraudulent telemarketers who are scamming thousands of dollars from unsuspecting individuals.

The unscrupulous organizations destroy the public's trust, and discourage donations of both time and money to legitimate, upstanding, not-for-profit organizations. Nevada's nonprofit organizations, including the American Cancer Society, make a valuable contribution to the welfare of Nevada.

The American Cancer Society, the largest and oldest of the private nonprofit organizations, played an important role in the battle again for the No. 2 killer in Nevada, cancer. The Nevada division is committed to eradicating cancer in Nevada through funding cancer research, and through programs of public and professional education.

In speaking with several of my colleagues around the country regarding charitable fraud, I discovered that some States have passed laws that are designed to weed out the bad guys and protect the interests of legitimate organizations. The American Cancer Society played an important role in helping to pass such laws as H.B. 486 in the State of Ohio, which provided desperately needed protections against deceptive fundraising practices as an example.

However, upon further discussion with my associates at the American Cancer Society, since the passing of that law it seems that many of the organizations which the law was designed to prevent have managed to find a way around the law and are still operating in the State.

The consensus among legitimate nonprofit organizations is that stronger measures are needed. It has been suggested that there is a need for a law on the Federal level that would give the attorney general of each State the power to ban charities from their State for a specific period of time which consistently violate charitable solicitation laws.

As recently as 2 weeks ago we received a call from a Clark County resident who had been contacted by one of these look-alike organizations to help collect money for cancer by going door to door. They also claim that to save money we at the national office will be coordinating this cancer drive. This would explain the reason for an out-of-State return address, and hopefully prevent further questioning.

The woman collected money from her neighbors and had them write their checks payable to the American Cancer Society only to discover, to her dismay, when she tried to return the checks that she really was collecting for another organization and not the American Cancer Society.

This example shows how easy it is for unscrupulous organizations to mislead and confuse the public. It so happens that the organization which was requesting the solicitation has harmed the American Cancer Society fundraising efforts in numerous States. It is a common practice for organizations like this one to move from State to State once they have been caught.

When you examine their appeals, they use language and phrases that are easily recognized and associated with the American Cancer Society, and are designed to mislead the public.

Such activities need to be curtailed. It is essential that we enact laws that will result in restoring the confidence of the Nevada public in charities and improve the quality of charitable programs in Nevada and around the country.

Charitable organizations that engage in deceptive fundraising practices not only divert funds from worthwhile programs, they also discourage charitable giving to all organizations. This in turn diminishes the ability of reputable organizations to continue to offer vital programs and services to the public.

When my office receives calls from people who think they have donated to the American Cancer Society and we inform them that they have donated to another cancer organization, they become angry and may react by destroying all subsequent mailings they receive, both from legitimate and fraudulent agencies.

This affects the American Cancer Society, and it also affects the community which depends on the private sector for many worthwhile programs. Millions of dollars have scammed away from legitimate organizations and have been used for purely individual and selfish reasons.

I thank Senator Bryan and the committee for inviting me to speak today, and would be pleased to answer any questions.

Senator BRYAN. Thank you very much, and the subcommittee thanks you as well, Ms. Mitchell. We will have some questions after the rest of our panelists are able to testify.

Capt. Mike Hood with the Highway Patrol, nice to have you with us.

STATEMENT OF CAPT. MIKE HOOD, NEVADA HIGHWAY PATROL; ACCOMPANIED BY TROOPER ROBERT BLOOD, REPRESENTING THE NEVADA HIGHWAY PATROL ASSOCIATION

Captain HOOD. Thank you, Senator. Thank you for inviting me. There is not much I can add to what has already been said here today with the exception that I would like to offer one bit of testimony here.

The Nevada Highway Patrol has historically had major problems with telemarketing scams. As recently as 2 weeks ago, our field offices in Carson City, Elko, and Las Vegas were flooded with calls from concerned citizens over an alleged fundraising campaign by the Nevada Highway Patrol to benefit a critically injured trooper. What made this particular incident difficult was the Nevada Highway Patrol Association was in the middle of a legitimate fundraiser.

Procedurally, the Nevada Highway Patrol does not solicit public funds. We have no idea of how many citizens who were under the false impression that they were giving money to a worthy cause may have contributed to this solicitation.

We have had several of these incidents over the past 5 years, and they have become more frequent. We would welcome any assistance in solving this problem, and we would also offer our assistance to solve this problem.

Thank you.

Senator BRYAN. Thank you very much, Mike. We were scheduled to hear from Sgt. Larry Duis of the Las Vegas Metropolitan Police Department. Is he in the audience?

Apparently he was detained, so we will move on to our final panelist, Mr. Ron Cook. Nice to have you with us this morning.

STATEMENT OF RON COOK, OWNER AND PRESIDENT, CONNECTING POINT COMPUTER STORE

Mr. COOK. Thank you, Senator. I would like to thank you for this opportunity to speak to you today.

In these days of Federal and State budget restraints it is important that charitable organizations have the opportunity to succeed. Federal mandates have affected State budgets and I anticipate more similar budgetary problems in the future. The voters do not want more taxes, and there are more and more in need in this country.

My name is Ron Cook. I am a certified public accountant and the owner of the Connecting Point Computer Center in Las Vegas. I am a former member of the Nevada State Senate.

I am a member of the board of directors of the Jewish Federation of Las Vegas, an advisory member of the board of directors of the Nevada Dance Theater. I am a member of the board of directors of the National Kidney Foundation and its past president for the past 4 years. For 15 years I worked for a nonprofit drug and alcohol rehabilitation center.

I have witnessed the demise of good organizations that have been unable to meet their budgetary needs. I think we were reading recently about the suicide hotline in our local newspapers. And I have in the past and I currently do consulting for nonprofit organizations.

A nonprofit organization, like any for-profit business, must be adequately funded. In the best of all worlds, people would voluntarily support good charitable organizations, and little or no expense would be incurred to obtain this needed support.

Unfortunately, this is not a perfect world and the reality of a competitive market for support must be faced. A week never goes by that I am not contacted, as a local business person, by some organization requesting financial help. Many of these contacts are invitations to expensive dinners that are rarely more than moderately successful to the charity.

Sometimes these events make no money at all or actually become a loss to the organizations. When recontacted for donations, donors who have purchased seats at these events will remind you that they have already given to your organization—the "I bought a table response."

The purpose of this hearing is to obtain information about the nature and extent of fraudulent activities pertaining to fundraising for charities. In recent months I have witnessed fraudulent activities in this arena, and I have seen some of the attempts made to stop such fraud.

Many of these attempts to stop fraud have been directed against certain fundraising methods and not toward those who are in fact fraudulently representing charities. Some statements have been made that not enough of the funds actually go to the charity, yet no attempts have been made to look into the actual costs of raising funds.

How many for-profit organizations are there that can show net profits to their owners of 25, 50, or 80 percent after deducting all true costs? It is a standard in the industry that a charity can expect to spend as much as $1 out of every $1 raised for fundraising

costs during the first years of development while the charity goes through the donor-acquisition period.

What percentage donated to a charity is not fraud? The IRS has stated that 15 percent, for example, is sufficient within the arena of bingo. Each activity must be looked at on its own.

If the nonprofit community is to succeed in these times, more new creative ways must be found to increase and not just divide the existing charitable fund base. The nonprofit community must look to private industry for methods that have been successful.

These hearings should focus on real problems within the industry, people who do not represent the charitable organizations and the ones that keep all the funds raised for their own personal benefit. This is currently going on in Las Vegas and the FBI has not been successful in stopping these unauthorized situations. There is recent case where they arrested the people and they were back in business the next day, and they are still operating today.

Deliberate misrepresentation to the prospective donor—there should be established procedures for reviewing the internal controls being utilized to prevent unauthorized misrepresentations. Many times a charity or its fundraiser is targeted because of the improper statements made by an employee who has made an unauthorized statement.

There has been a suggestion here today that we hold the owners of companies responsible for what their employees say. I think that if we do something like that it should be some kind of internal control situation or we are going to be arresting all of the legitimate owners of used car dealerships, I think, within the State.

The establishment of disclosure procedures that are not so burdensome as to prevent the fundraiser from being successful—the answer to the problems facing the nonprofit arena will not be solved by creating burdensome regulations. There are currently 43 States with 43 different laws requiring 43 different forms in order to register and conduct fundraising in their respective jurisdictions.

If we continue to build this nightmarish maze we will succeed in forcing nonprofit organizations to utilize all of their hard-earned contributions to cover the costs of complying with these very same rules and regulations.

There is a side note that I wish to make. Regulatory agencies have created pressures that have caused all of the banks in Southern Nevada to cease doing business with anyone who uses certain fundraising methods. It is strange that a nonprofit organization using telephones to raise money is not permitted to have a bank account, even when there is zero risk to the bank. A drug dealer may have a bank account, but an organization trying to help prevent drug addiction may not.

I have recently read a request for information presented to a nonprofit organization by the FTC. Small charities cannot afford the legal costs to properly respond to such documents, nor do they necessarily have the in-house expertise to provide such responses. I would suggest that these agencies could satisfy their needs by meeting with the people and really finding out what is happening.

I thrill to the marrow of my bones every January 15 when television airs a 1963 speech of Dr. Martin Luther King in which he said, "I have a dream that my four little children will one day live

in a nation where they will not by judged by the color of their skin but by the content of their character." Charitable organizations must concern themselves with their appearance, but the regulatory agencies who hold their very existence in their hands must look to the content of the character of the organization. This must be done without preconceived prejudices that prevent an accurate review of these activities.

I would be happy to assist this committee in any way to reach its objectives. I offer you my time, my knowledge, my experience in hopes that new regulations are beneficial and not harmful to those same organizations that we are trying to help.

Thank you very much.

Senator BRYAN. Thank you very much. We appreciate your testimony.

We will have a chance for some questions now. Mr. Winckler, let us begin with you. Clearly you are talking about an area of ethics. That is always very difficult to define. And by statute I have some experience with this matter at the Federal level, not with respect to telemarketing ethics. But how do we address the kinds of problems?

We have Mr. Cook's view that he has expressed that we do not want to blanket and say, look, you cannot do A, B, and C, because there are legitimate people that do use those techniques and there are obviously other people who use those techniques to a fraudulent and not a legitimate end.

But what can we do to assist those of you at the local level who are directly impacted? I think Linda Smith did a pretty good job of putting it into perspective. I mean, there are two real vices that arise. One, the donor pool is limited to the extent that you divert resources from that. That makes less money available to charities for the various legitimate purposes in our community and, as Mr. Cook points out, it is because there is an increasing demand and a recognition that the Government cannot and should not do it all.

And second her point would be that once victimized you are much less likely to respond again. So, in effect not only is the individual harmed, but the community is harmed as well.

What kinds of tools can we provide you at the Federal level? What kinds of tools can be provided for local consumer affairs or State attorney generals offices that deal with some of these areas that are a little bit more in the gray zone, I guess, in terms of the amount of money that is consumed by the effort itself as opposed to what is done in the community? And there are some pretty shocking cases, as you point out.

Mr. WINCKLER. Senator, I think there are several things that can be done, by charities, by local communities, and possibly through legislation or regulation.

Bill Henderson talked about educating the public, and I think that we all have a responsibility to do that. It does start there.

Senator BRYAN. Let me just ask you, Garth, if I may, and I do not want to cut you off, but are we doing an adequate job generally? I am not trying to put you on the spot but, I mean, to what extent are we educating the community in southern Nevada about the kinds of scams that we heard about this morning? Can we do a better job there?

Mr. WINCKLER. When it becomes scams we do a good job of educating the public because it has everyone's interest. What we are not doing a good job of, I think, is educating people as to the standards that they should be holding charities to and the types of questions they need to ask. Or, if it gets to the regulation side, the types of things that a charitable organization must reveal when soliciting a gift.

I have to say I have never seen a good board of directors operate a fraudulent charitable solicitation. And I think one of the things that needs to happen is a community program, and we have a board training program that we offer not just to United Way agencies but throughout the community. Educating boards of directors and recruiting to boards of directors a broad spectrum of the community, and having those people put their name on the line until we thoroughly review what is going out in the name of that charity. Good people, concerned citizens, taking care of business are not going to let those types of things happen. So, I think that is one thing we could do.

However, I do think that it should be required that professional fundraisers reveal their relationship when asking for a donation. If they are commissioned, if their payment is at all tied to the amount that is being donated, I think that should be revealed.

I think if the amount of funds that result from charity purposes are below a certain threshold—it used to be in the city of Las Vegas before it was ruled to be unconstitutional, I believe, that anything over 25 percent—you went before the charitable solicitation review board, and if your costs exceeded that level you had a very hard time getting your permit. You cannot use that anymore, so anything that could be done that would establish some sort of reasonable standard that donors could look to and ask a question about—is it more than the standard or the amount that is going to a charitable purpose—and then have documentation upon request that would back that up.

And I think that possibly the 990's that we all have to file, our tax returns could be made accessible to the public. Some small organizations are exempt from that. I think that is something that should be looked at because they are easy prey to some of these telemarketers. The organization that I used in my example has well meaning people who saw a way of raising money for their organization, which they have in fact done, but they have done it through very questionable ethics.

Senator BRYAN. This is the Street Wise group?

Mr. WINCKLER. Street Wise, yes. But I think that possibly if you are involved with a telemarketing or telefunding type of an operation, exposing those costs in the 990, which has to be available on request to donors, I think that one might help in some respects.

Senator BRYAN. Let us just accept for the purposes of our discussion this morning that each of those recommendations that you made that we ought to act upon—the public education issue to make people more aware not only of the scams but also in terms of who they are giving to and the amount of money that's going to the charity and all of that sort of thing, I think that is something that would be universal. And I do not suspect anybody here would disagree with that.

The question of standards—it is pretty hard to argue against the proposition that there ought to be standards, but who ought to devise them? Is that something that ought to be done on a community-by-community basis? Should the local government, city, county, State? Should the Federal Government?

You know, we are not real good at that. We get off with the best of intentions and then we come up with some regulations that maybe kind of address some of Mr. Cook's concerns that take two men and a small boy to carry into your office, and that are so cumbersome they are simply ignored because they are so very, very involved and convoluted.

Mr. WINCKLER. In all honesty, I think the most effective standards would be those put together by the donors themselves. They are the people being asked for the money. They are the ones who are giving. And if there was some way that the donors, a group of donors on a community-by-community basis could be reviewing charitable efforts being taken in that community and report back to the community what they find, that would probably be the most effective.

I would prefer to see a single type of charitable solicitation law across the country rather than all the different State types of things. Actually, I feel that Nevada's laws are not very arduous at all compared to many States, and I expect that that could be worked out.

Senator BRYAN. You are talking about some State legislation to make it a little tougher. Let me get back to those standards, though. Is there a process that is in existence in this community where those you—let me ask Judith and Linda who are involved in two very high profile, very legitimate, worthwhile—I have been involved particularly with Linda in Opportunity Village over the years. But as a son of a father who died of cancer, I have great personal sympathy with the Cancer Society.

Do you all have any standards yourselves that you kind of use as guidelines to in effect say, look, these are the kinds of things that we who are involved in legitimate fundraising efforts for charities follow—in terms of the amount of money that goes to the bottom line so to speak, and other kinds of practices. Is there any of that is existence now?

Mr. WINCKLER. Yes, there really are several things. We have a code of ethics that we have adopted for our staff and for our volunteers that involved ethics of charitable solicitation.

Senator BRYAN. Is that throughout? And, of course, I am not trying to put the United Way on the spot, but is that something that is embraced widely throughout the charitable solicitation community in southern Nevada?

Mr. WINCKLER. I think NSFRE, the National Society of Fundraising Executives' code of ethics is fairly well endorsed throughout the community. Beyond that, for all the organizations that we have, and we raise about $7 million and provide funding for something in excess of around, I would say, 65 different organizations, those organizations are required to go through a self-accreditation process and standards are created within that which are then reviewed by independent volunteers. So, those types of things exist.

The Better Business Bureau's standards I think are good and they exist on a nationwide business. The National Information Bureau on Charities has a set of standards nationwide that I think is worthwhile looking at.

So, there are some existing standards that I think can provide a basis for some commonality that we need to talk about.

Senator BRYAN. I do recall the old charitable solicitation board that we used to have for the city of Las Vegas, and that was struck down, I guess, on some constitutional infirmity of some sort.

Mr. WINCKLER. There is still the need to go get the permit, but the permit is similar to getting a business license today and not based on any type of return for a charitable purpose.

Senator BRYAN. I take it that those standards that you are talking about, there are four or five different sets of standards. I suppose any one of them kind of hits the mark somewhat on point. You could not, as a precondition to issuing that permit, require that the charitable applicant for the business license subscribe to the standards?

Mr. WINCKLER. Some of those standards would have the same types of dollar limits in them that were found to be unconstitutional. So, it gets back into that area again.

Senator BRYAN. Linda, what do you think we can do? I mean I read recently, and you testified to it, about the problems that you have had with Opportunity Village in terms of people using your good name, and obviously taking revenue that would otherwise go to the program. What can we do to be helpful?

I do not disagree with standards. I am just not sure how we develop these at the Federal level, but I guess that could be done. What do you think we need to do?

Ms. SMITH. I believe that the community at large is aware. One thing that will happen, there will be an article in the paper that mentions a scam operation, it will turn everybody off for a while, and it hurts all of us. When this issue is profiled in the press everybody just sort of gives up for a period of time.

Or, when you highlight one particular nonprofit who has done something unethical, people's memories are short lived. And many times I have gone and spoken to individuals and they have said, well, are you not the charity that—particularly when we relate to thrift stores and there is so much abuse in the thrift store operations here in this community. People confuse us with each other.

And I think you, Senator Bryan, had mentioned, and the gentleman from the Better Business Bureau, that public service announcements be produced informing the community to look into the ethics of nonprofit organizations, and check and make sure that an event really is happening.

Our board of directors does not allow telephone solicitation, and I believe my peers within the nonprofit community here, do not use that type of fundraising. Opportunity Village will not phone people at home and annoy them at 6 or 7 o'clock at night. We will telephone only those individuals who have given us the right to use their phone number, or that are donors or a board member or a member. Outside of that group of people, we will not solicit by phone.

Senator BRYAN. So, what you are talking about, Linda, are what we call cold calls where you would in effect say, "Hi, I am Linda Smith with Opportunity Village. I hope you have heard of us. Let me tell you about the wonderful things that we do. And, by the way, can we get a contribution."

You have people that you call that have some kind of relationship either as members of your board, prior contributors, people who have signed up as volunteers.

Ms. SMITH. We will solicit through the mail and through our events, and generally people will call us back and respond. We just do not put the heavy arm on an individual. Or a board member might solicit for a particular event to his associates, but you know who that call is coming from, you know that person. We should let the community know that legitimate nonprofits will not be phoning you and soliciting you at you home.

Senator BRYAN. Before getting to you, Ms. Mitchell, let me go back. Ron, what about that? I mean, you have been involved in raising money to run for public office, as have a number of us, and there are real concerns that some of us had over the years about fundraising on the telephone.

I must tell you that I think that that leaves itself open to so many potential abuses, even if you are trying to be diligent in controlling it. And Linda is suggesting that they just do not do it as a matter of practice, I suppose because of the inherent ability to control it, and perhaps the reaction that they have.

You have kind of argued in effect that there is a greater need today and we ought not to strap charities in terms of their ability to raise money for legitimate causes.

How do you feel about this telephone solicitation? I must tell you I am uncomfortable with it. I am talking about the cold calls, not you calling me and I am a member of the Nevada Dance Theater or whatever other boards that I know you have served on for many, many years in which you call and ask for a solicitation because I am on your board or I have been part of the effort. That does not give me a problem, but the cold calls do.

Mr. COOK. Well, I am a little uncomfortable with some of that too. I probably get one call a day from stockbrokers, which is really annoying, and they get nasty on the telephone if you just tell them, I am sorry, I do not invest in the marketplace. They start screaming at you. And I think those people are under the SEC.

I think the biggest problem we have has to do with disclosure and misrepresentations that are going on. I think if we just try and smash an industry, like for example what has happened within the telemarketing industry—there is an article here from the Buffalo News. "It comes as no surprise to those who have prosecuted telemarketing scams, once they shut a company down the sales force scatters and opens smaller operations. It is like smashing a ball of mercury."

We have got to get some good, strong laws having to do with misrepresentations and that type of thing, and disclosure regarding telephone solicitation. Telephone solicitation is just a method. I mean, Sears & Roebuck calls me to see if I want to renew my warranty on my washing machine. And they will call you constantly.

If you say "No," they will call you back. City Bank is constantly calling having to do with the Visa card.

I think trying to monitor what we do—I think one way to do it is just not answer calls, or what I do in my own home because I do not enjoy all those is I listen to see who is on the other end through the answering machine before I pick the darn thing up. I suppose I have just made public how to get through to me, or something like that. [Laughter.]

Senator BRYAN. Now I know.

Mr. COOK. I would also like to speak in regards to your statement, that I was absolutely unsuccessful raising money in the political arena, and it cost me a lot of my own money which I was never reimbursed.

Some of the misrepresentation—we have a situation right here in Las Vegas. Within a 30-day period one group raised $350,000, at least $350,000 that we are aware of, that went into an account in Denver and the Government has seized that money currently. They arrested these people. The next day they were back in operation. They still continue with the operation. They have been operating for at least 3 months. I mean, if they raise $350,000 or more within a month, what have they done during the past 3 months?

And this is just rampant and going on, and like some of the other people have stated, this is really bad for everybody. I mean, you know, those people who want do something legitimately certainly are getting hurt by those people who are doing things wrong.

I really think we need to do something about misrepresentations, disclosures, and things like that, and go after those people who are doing things that way.

Senator BRYAN. I do not think Mr. Winckler would disagree with that because part of his point was that there should be an identification of the relationship, which I take it to be part of disclosure.

Assume for the sake of argument that you do believe that we ought to have some type of regulation or some type of mandate to make full disclosure. What type of information should be disclosed to the public as part of a solicitation? Let us assume it is a telephone solicitation, because that is what we are talking about here today. Who ought to enforce that?

Mr. COOK. You know, I really think some of that stuff ought to be enforced through the Internal Revenue Service regulations having to do with 501(c)(3) organizations and their audits of the companies. I mentioned that there should be audits of the internal controls of the activities of an organization, and I think that that is an appropriate place for some of these types of inquiries to go is through that situation.

Senator BRYAN. There really has not been much followup there, you are right. Once you get the 501(c)(3) there is really not a lot of followup, so I think you do point to an area of vulnerability in terms of seeing what kind of activity these folks are involved in once they get the 501(c)(3).

Mr. COOK. In addition to that, there could be a standard disclosure. I suggested one. The American Charitable Organization was established in 1976. A copy of the ACO's latest annual report or audited financial statements may be obtained by writing to our headquarters.

The problem is, if you try to put too much into disclosure, by the time you get done you have discouraged anybody from contributing, which is what you are trying to do.

I used to have people who would come in to buy computers when I first started in the computer business. And they would say, is this computer here—because I sold IBM compatible computers, not IBM's at that time. And they would say, is this the same thing as the IBM? And I used to say, yes, but—there was like one-half of 1 percent where somebody may have a problem some day. And I used to go into great explanation in order to clarify exactly what the differences were, which would never have created these individuals problems by any stretch of the imagination.

By the time I got done with full disclosure on this one-half of 1 percent difference, which did not make any difference to them, I lost the sale. And at some point I had to say, in selling I have got to be honest to people and I have to tell people, and I have to make sure that they are taken care of, but I do not have to spend all of my time trying to convince them that there may be something wrong somewhere along the line. And I do not think I did anything immoral by not bringing up something that was not going to affect them, and if it ever did I took care of the problem.

So, we have to be careful about not forcing overdisclosure or we are going to shut the whole thing down.

I am concerned about the banks. I would imagine somebody would have a good antitrust suit against those people. But every bank—I mean, we are talking about funds that are transferred in. They just will not permit a bank account to exist.

Senator BRYAN. That was another question I had. Explain what you mean about the bank account situation. I was not following you there.

Mr. COOK. Certain organizations that have used—there are certain words which are now bad in the English language. One of them is telemarketing and the other now is telefunding. I mean, all of them represent fraud, which I do not believe is the case.

There is fraud that goes on within every arena. I know some of my competitors in the business community have lied to a customer in order to get the customer to go to them instead of coming to me. I mean, that kind of thing exists within the world that we live in.

You know, I was doing really well, and I then I just forgot where we were going. I am sorry.

Senator BRYAN. You had started off by saying that there are certain terms which today have taken on such a negative connotation that all telemarketing, all telefunding is per se fraudulent and improper, and you were responding to my question about the bank account and the inability to get a bank account. And I think you were suggesting that someone who is involved with telemarketing may not be able to get a bank account today.

Mr. COOK. That is correct, including whether you are doing it for a charitable organization. And they have gone so far as to follow the checks written by organizations collecting money by telephone, and I am talking about for legitimate purposes. And they had closed their accounts because they have received money from certain other individuals, and these are accounts that have been in existence for many, many years.

Senator BRYAN. So, you are saying that if you are identified as being in a telemarketing activity you cannot get a bank account?

Mr. COOK. Absolutely not in this town. I mean, none of the banks. And I have, quite frankly, been to some my good, dear friends who are presidents of the banks and have talked to them about it, and they have made it very clear to me that it is not in their hands.

Senator BRYAN. Ron, one other thought and then I want to get some response from Ms. Mitchell and Captain Hood.

In addition to the 501(c)(3), and I personally think that more needs to be done there, but with respect to the disclosure—you know, who you are, what you are calling for, whether you are a professional or whatever your relationship is, you acknowledge that there ought to be more of that.

Well, the 501(c)(3) is part of the answer, I suspect. But, I mean, what other enforcement mechanisms are there? Who ought to have the ability to insist that that is done? And if it is not being done because not every one of these organizations would be a 501(c)(3), as you know as a CPA, who ought to have the ability to insist that there ought to be a disclosure, and what type of disclosure ought to be required?

Mr. COOK. If it is not a 501(c)(3) organization it certainly ought to be covered by the Federal Bureau of Investigation if it is done across State lines. If it is done within the States, the attorney general's offices I would assume would have jurisdiction and should be going after these people. Across State lines, I presume it is the FBI.

I believe that there is an area where the FTC certainly has a role to play. And if someone claims to be a charitable organization and they are not a charitable organization, they are certainly not protected by any of the laws or the Supreme Court decisions having to do with 501(c)(3) organizations.

Senator BRYAN. So, you do not object per se to some type of regulation promulgated at the Federal or the State level with respect to the disclosure?

Mr. COOK. Oh, I would encourage it. I would encourage it. I am not trying to stop what is going on here. I am just concerned that we do not damage opportunities for very small and other kinds of organizations to get the funds that they need. I think that we need to do something desperately.

Senator BRYAN. I understand. Ms. Mitchell, let us get the benefit of your thinking. You have also been victimized, the Cancer Society, with everybody trying to use your good name, and certainly some of these scam artists are very skillful at designing names that are deceptively similar.

As you may recall from our first panel, we were told by both the FTC and by the State attorney general's office that they do have the ability to operate where there is a deceptively similar name being used. And I guess my response to you is, Has that been of much help to you and your organization in preserving your good name and preventing these kinds of activities from occurring?

Ms. MITCHELL. I do not really think it has. In some cases it may, but I think when you are dealing with organizations that really are out to deceive the public, it is not something that helps.

There are a lot of good organizations out there that do use the word "cancer" in their names, and we are—I am not saying that we should prohibit those organizations because there are a lot of little niches within the entire cancer world that the American Cancer Society——

Senator BRYAN. Candlelighters and people like that are a wonderful organization to this community.

Ms. MITCHELL. Exactly. They are very good, legitimate, upstanding organizations. But there are some organizations that do use the name "cancer." When you talk with them or get into questioning—because I have received calls from those individuals at my home also. When you question them a little bit more, they will allude to the fact that, yes, they are in some way related to the American Cancer Society, and they will not deny that. And they use that as a way of getting the support or getting the donations.

Senator BRYAN. Ms. Mitchell, what do you do? Let us suppose that you leave and you head back to your office this afternoon and another one of these mushrooms has erupted in the community and a group that is using a very cleverly designed solicitation by phone that makes it sound like it is your group. Tell me what you can do under the present law.

In other words, you get this call this afternoon. You sense, based upon your own experience that, hey, it is not going to be the first person that calls to tell me about that. There are some folks operating in the community.

What do you do? Tell me, who do you call and what kind of help can you expect them to give?

Ms. MITCHELL. Well, we will call the Better Business Bureau. In fact, a couple of weeks ago, the incident that I mentioned, that is where we called and we reported that this is happening, and to let them know that if they should get other calls from individuals that, no, we are not conducting this kind of solicitation in the community.

We also will write letters to the editor, and we have been very successful in getting those printed, in fact we had one in response to this very incident, where we will tell the public exactly what it is that we are doing, when we do it, what our campaign is about, and to make it very clear that they are not soliciting funds for the American Cancer Society.

A lot of people are misled because there are a lot of organizations out there that use secondary solicitors or secondary companies to solicit funds. The American Cancer Society does not do that. We employ our own individuals through the use of volunteers or we will have a center that is nationally doing this for the American Cancer Society. So, we have a lot of control over what is being said and who is being solicited, and that sort of thing.

So, we make it very clear that if there is another group out there saying that they are raising dollars for ACS, unless they have a letter or some sort of evidence to say that, yes, we have given them the ability to do this, then they should not donate their money.

Senator BRYAN. Ms. Mitchell, I think what you have described I put under the public education rubric, and I think everybody that has testified agrees on that. You are doing an effective defensive

strategy. You are alerting the Better Business Bureau, you are alerting the media that these practices are occurring.

But talk to me for a moment about what you do in terms of an offensive thrust, if anything. You alert the public that this is going on, but do you call anybody and say, look, we have got to ferret out these people and affirmatively, you know, get them to stop. Again, under my hypothetical words similarly deceptive, and the FTC tells us that they can act in that area. The State attorney general tells us that they have the ability to act in that area.

Is there a mechanism where you call either the FTC or the attorney general's office and say, look, we have got a problem here and here is the name of the scam, here is what it is, and get them to affirmatively——

Ms. MITCHELL. Yes, we have worked cooperatively with the attorney general's office and FTC in identifying a lot of these individuals in these organizations. In some cases we have been successful in getting them out of the State or closing them down.

But like other individuals say, they will pop up again under a different guise, different name, within a matter of weeks. But we have been successful in interrupting a lot of the business and putting it to a stop.

Senator BRYAN. Do you agree that disclosure is an important part of the problem in the sense that people that are calling and soliciting ought to be required to disclose their relationship and other information relating to the charity that they are soliciting on behalf of?

Ms. MITCHELL. Yes, we do support disclosure. We feel that if you are going to solicit dollars from an individual, that that individual should have all the necessary information to make that decision. And if that means disclosing who you are working for, what percentage you are going to get, how the dollars are going to be spent, what percentage of the dollars will actually go toward programs, we strongly support that.

Senator BRYAN. I thank you. Mike, tell us about your experience. I mean, you are victimized too. Somebody calls and says, look, they are soliciting for the Highway Patrol Association. Why do you not just kind of follow on with the question I was asking Ms. Mitchell? What do you do when you hear about that?

Captain HOOD. Well, what we do immediately is we try to get any information, pertinent information we can about the incident, and we contact—we call the Better Business Bureau. There are not many remedies available to us, even though we are a law enforcement agency, of what we can do.

To add onto what she was saying, I fully support disclosure also. And as a person who has received calls in my home as a private citizen, I think that the biggest thing that I could be told is what percent of the money is going toward the stated purpose.

If I could be told something—and I have to agree with Mr. Cook, where you do not want to go into a big, long dissertation of what is going on, but there are some pertinent facts that we need to be made available to us. How much of the money is going to go for the stated purpose? We should somehow be able to put the burden of proof back onto the solicitor. Is this a legitimate cause, what they are soliciting for?

Senator BRYAN. I guess the question, though, that evolves is human nature being what it is, there are going to be people that violate that. I do not disagree that that information is pertinent and should be required. But again, assume that there are those out there that are not going to comply with this standard or this rule. Where does the enforcement come? That is really a question in my own mind. At what level does it occur?

Do we enlarge the ability of Ms. Rausch to get involved in that and the attorney general's office? That is certainly not something that I find distasteful. Is there a Federal role? Is it done at the consumer affairs division in our various States?

Or, where is the hammer I guess is what I am asking, because you know in law enforcement you have got a lot of rules out there and we frankly would be joining the Nation's unemployed if everybody adhered to all of those rules that we have out there. There are people who violate those, and that is why people like yourself and others who have chosen careers in law enforcement are not concerned about whether there will be business for you to attend to each morning when you come into the office.

Captain HOOD. I do not necessarily agree that the enforcement should be at the Federal level. I think that local problems should be handled by the local agencies. I do agree that the attorney general, the State attorney general, should be involved in setting up the program as far as enforcement. But I believe there should be either the local State agencies or county agencies that have the teeth to actually make arrest and provide cases to the district attorney's office for prosecution.

Senator BRYAN. Let me give each of you an opportunity to think of anything that I failed to ask before we conclude this. Mr. Winckler, we will start with you.

Mr. WINCKLER. My major concern is that if telemarketing and telefunding are becoming bad words, I would sure hate to see charity become a bad word along with them. An awful lot of good is done in this country through legitimate charitable organizations, and that has to be protected, I think.

Second, possibly something that could be done is some sort of a cooling off period in the telemarketing. Instead of sending someone out to pick up the check immediately or using an express agency to go pick up the check immediately, possibly mailing something from the organization that would have further disclosures in it that would be returned along with the check. Something like that would also provide that time and the opportunity for people to check it out instead of just making an emotional decision.

As you take a look at the people who are scamming people, they are targeting a certain group of people who I think are vulnerable to that, and that would provide them some added protection.

Senator BRYAN. I think your point in your testimony, you do not want charity to become a bad name, it is true as you point out here, looking at your own information here, when asked how concerned are you about the amount charities spend for fundraising and other expenses—which has been highlighted and you were very candid to acknowledge the United Way has had its share of problems too, nationally, people talk about that. I mean, that is quite the subject of discussion among people who are part of that donor

base, people who year after year have signed on to become part of the United Way or participated.

Mr. WINCKLER. The donor is the customer.

Senator BRYAN. You bet. And people who are involved in the various things, the Cancer Society and what you are doing, with the highway patrol, well, the numbers are up—49 percent said they were "very concerned"; 32 percent "somewhat concerned."

There is a warning out there that a lot of that donor base is going to be much more cynical and much more skeptical in terms of making those contributions.

Linda, any comments that you might have in terms of what other areas we might be able to do to be helpful in addressing this problem?

Ms. SMITH. I guess I am impressed with my fellow speaker's points, and would like to conven a group of people who are faced with this problem, and sit down and come up with some recommendations together, that could be something that could happen, and for charities also to know which way to turn when these kinds of problems exist.

The Better Business Bureau has been helpful to me, but often I find myself tracking down these individuals to try to stop them before they do too much harm, and I have been threatened. I mean, there are some awfully sleazy people out there. I would love to see some effort go into getting organizations that are all facing the same problem, sitting down and coming up with solutions, and not try to do it today in one fell swoop.

Senator BRYAN. I think that makes some sense because all of you, in a sense, are in the same boat. Whatever the object of your charity, you all are going to be affected by this and you are all diminished as a result of this activity. And although Garth has mentioned several different groups that have standards, if you all could agree among yourselves as to what the standard is and try to get that better publicized that would, I think, be helpful at the local level.

Ms. Mitchell, how about you?

Ms. MITCHELL. Well, I think the last two speakers really hit on a nerve there. We do have a lot of internal standards and they are standards and internal regulations in terms of accounting and how we handle our dollars and what percentage can go for a fundraising activity in terms of putting on the activity. So, we do have a lot of internal controls also within the American Cancer Society.

But I like the idea of a cooling off period. I think of many times when you have gone in and been solicited in terms of buying something, and you have a 3-day period of time in which you can cancel the contract—something of that nature.

When I hear people are Federal Expressing money, I mean to me that is just mindboggling because, you know, we wait for the check in the mail or we can take a credit card. But, again, you can go back and you can cancel that if you decide that you do not want to give.

So, I think those kinds of means—we might want to look at doing something in that area to kind of slow it down so that individuals are not caught so quickly and by the time they find out there is no recourse to get those dollars back.

And I like the other idea of sitting down with agencies on the national level and coming up with some agreement in terms of what kinds of standards we are going to abide by, because I do know that we do have a lot of standards within the American Cancer Society, and there are some other organizations who have similar standards. And that would help the public in clarifying what they are. And when there is somebody that does not fit into that, they can easily distinguish between them.

Senator BRYAN. I suspect, Ms. Mitchell, that you are right, that even the fairly sophisticated people are not aware that there is a standard out there that you live by and that Mike lives by, and whether that standard is promulgated by the Better Business Bureau or the groups that Mr. Winckler described in more detail.

But if somehow there could be a greater public awareness of, hey, look, ask them if they subscribe to whatever the standard is that you all deem appropriate, that might be helpful to at least make people a bit more aware and perhaps ask a question or two.

Mike, any thoughts that you have?

Captain HOOD. Yes, Senator, I would like to add one thing. This is a national problem, and I would like to clarify, it is the FBI's problem also, but we should be able to assist the FBI in helping them because this is a problem of a magnitude that they would have to increase twofold to assist. But we should be able to assist them in giving enforcement on issues.

Senator BRYAN. Yes, Mike, and the legislation that I have drafted recognizes that indeed at the Federal level there is a limitation in terms of how much expansion you are going to see because of budget constraints, and what Mr. Cook was talking about. And so it expressly provides, as Ms. Rausch knows, for the attorney generals to have the ability to enforce the provisions as well. So, it is not mutually exclusive. It is people working together, using some of the tools that are out there and providing those tools to local people as well.

Ron, we will give you the last word.

Mr. COOK. Amen.

Senator BRYAN. Amen.

Mr. COOK. I would like to thank you. The Supreme Court case, I think it is *Riley* v. *the National Federation of the Blind* in South Carolina was a 1988 case, which is one of the cases which prevents full disclosure having to do with the percentage of income. In fact, I think that was the case that said that no one could legislate what percent of the income can go to a charity. So, to some extent the Supreme Court has been involved in this.

But I really believe in full disclosure. I believe that the Internal Revenue Service needs some strengthening of the regulations regarding how nonprofits are run, and some teeth given to the FBI for these fraudulent things we have talked about.

Senator BRYAN. I appreciate your suggestion. I am not familiar with that case. I will have our staff take a look at it.

It is just my sense that the charitable solicitation board served as an important screening process in the old days. Now, I understand that the Supreme Court has spoken and they tell us what the law is, but perhaps something might be salvageable from that opinion. Maybe you cannot be specific that is has got to be 10, 15,

20, 25 percent, but some screening mechanism was helpful, at least in my view, in this community. And I know that those who at least had gone through that process had at least received some imprimatur of public scrutiny and approval. So, maybe there are some things that we can do.

Let me thank each of you for your participation here today. It has been helpful, and your comments will be made a part of the record. And I thank the audience as well for their attendance.

This subcommittee meeting will stand adjourned.

[Whereupon, at 12:35 p.m., the meeting was adjourned.]

APPENDIX

PREPARED STATEMENT OF FRANK B. DOWD, WASHINGTON, DC

We have a situation in this country which needs to be stopped. Specifically, an increasing number of telemarketing firms are posing as legitimate charities and targeting older Americans for giving. I can speak from personal experience and heartache with regard to my father, Mr. Myron B. Down, of 58954 60th Ave., Hartford, MI 49057, who was so targeted. Mr. Down is a generous individual, but he is 78, in ill health, and currently dealing with the fact that his wife (my mother) of 46 years has had to go into a nursing home. My father has been understandably depressed for some time and his judgment has been clouded by these facts. He was an easy target for one telemarketing firm in Las Vegas, The Charity Center, and two fraudulent charities it represents: The Gleaners, and Operation Life Community Development Corp. There are other telemarketing organizations which targeted him as well, and these I am now investigating. For now, I wish to draw your attention to the activities of The Charity Center.

The Charity Center began calling my father in July of this year representing The Gleaners, promising prizes such as a $50,000 annuity, 5 years of savings bonds, $25,000 in 14-carat gold coins, or a new Mercedes Benz worth $50,000, if he would contribute money to their cause. In my father's notes of one conversation, Mr. Gordon Grotts of The Charity Center promised my father that he was guaranteed to win $50,000 if he would send The Gleaners a donation of $2,200. Mr. Grotts also assured him that his check to The Gleaners was tax-deductible as a charity contribution under IRS regulations. My father was contacted several times in July and August, variously by Gordon Grotts, Sharon George, and "Bob." In total, my father was successfully defrauded out of $4,900 in this way. In at least one occasion, Sharon George solicited a contribution to The Gleaners for $2,200 to be picked up by Federal Express. This was sent to a residential address in Las Vegas, 2550 S. Duneville. I have the receipt records from the UPS pickup. I also can produce the canceled checks which were made out to The Gleaners. Needless to say, my father never won any of the prizes promised. Various telephone numbers for The Charity Center are: (702) 876–5026 and (702) 259–1099. Their address is: 5132 West Charleston, Las Vegas, NV 89102. The address for The Gleaners as listed with the Nevada Secretary of State's Office is: 1670 Twain Ave., Las Vegas, NV 89109. The "official" telephone number listed is (702) 687–5105.

My father was also contacted by The Charity Center for an organization called Operation Life Community Development Corp., at 600 West Owens Avenue, Las Vegas, NV 89106–2717. Specifically, people names Lisa Johnson and Travis Marshall successfully managed to defraud my father of $2,000. Again, I have access to the canceled check and I have my father's telephone log of their conversations. In talking with a Mr. John Heart of Operation Life, he confirmed that their organization had indeed used The Charity Center as a fundraising firm, but had subsequently switched to another organization called The National Clearinghouse. As an aside, this organization was recently prohibited by Florida law from doing business in that State. My father was promised the same prizes: a $50,000 annuity, $25,000 in 14-carat gold coins, etc. Again, my father was under the impression that he was supporting a good cause, he could win a prize, and that his contribution was 100 percent tax deductible. What a combination!

Altogether, my father was successfully bilked out of more than $6,900 by The Charity Center through aggressive telemarketing efforts, and several thousand dollars more by various other telemarketing firms posing as charities. Probably most of this money is gone, but I really think that the U.S. Senate is in a position to do something about these two fraudulent charities, The Gleaners and Operation Life Community Development Corp., and their shared telemarketing firm: The Charity Center. I have spoken to representatives of all these organizations on the telephone. Please allow me to share the results of my research and my telephone conservations.

The Gleaners has had a checkered past. Although touted at the 1984 Republican National Convention as a model charity, run by Celeste McKinley (now known as Celeste Tate), this organization has been just one step ahead of the law. They were kicked out of the Sahara Hotel in Las Vegas for welshing on tax-deductible statements for the hotel, and they consistently failed to report their activities to the IRS on form 990 as they are required to do. They have maintained a "cash" way of doing business, with mortgage payments for Ms. McKinley Tate intertwined with charity expenses. While maintaining that they take no Government help, they did in fact employ two VISTA volunteers. The organization "tithes" to a store-front church whose pastor in on their board of directors. Minutes of board meetings are a sometime thing. The current president of the organization, Mr. Corey Tate, was extradited to Wichita, KS, in 1991 for jumping bail. It seems he was charged with setting fire to his mother's home "with her in it." All this is documented in a three-part article in the Las Vegas Review-Journal of August 12, 13, and 14, 1990, and in an article in the Wichita Eagle of July 12, 1991. The story was also picked up by USA Today. Most recently, an article in the Los Angeles Times of August 16, 1993, notes that Orange County residents have been approached by The Gleaners of Las Vegas, posing as the Red Cross. I do not have readable copies of the Las Vegas Review Journal articles of August 1990, but they may be obtained from the Las Vegas Public Library by calling (702) 382–5280. The library has been most helpful. The other two articles, the results of a DIALOG search, are appended.

In checking with the FBI in Las Vegas, Mr. Clair Elkington, FBI Agent, who may be reached at (702) 385–1281, confirmed that about 7 months ago, The Gleaners decided to hook up with The Charity Center to raise funds. I spoke to Mr. John Rubbico, president of The Charity Center, in early September of this year. Mr. Rubbico assured me that The Gleaners were a legitimate organization, "feeding the hungry" in 192 cities. I asked him to name 10, which he could not do. When he did name Washington, DC, as one of the cities I called him on it. There is no Gleaners operating in Washington. I inquired if The Gleaners had a 501(c)(3) status. Mr. Rubbico assured me that they had to, but only when pressed, told me that they did have. I inquired about some information on this charitable organization as my father had given almost $5,000 to them. He could not provide me with that information and told me to call "customer service" the next day. When I did I soon discovered that Prize Award Center and Charity Center share the same telephone number. A criss-cross call to the Las Vegas Public Library revealed that The Charity Center shares headquarters with an outfit called Bullet and Blade Training Center.

Mr. Rubbico told me that Mr. Martin Mayer, head of customer services, was the person to contact. I could not get through for some days. Mr. Mayer did not return my calls. Mr. Rubbico was no help either, claiming he had no further information to give me, and he seemed rather irritated at my continuing phone calls. Since I could not get through to customer service. I repeatedly called Mr. Rubbico. I found it strange that someone who is the legally recorded president of The Charity Center could not provide information on what they were doing. Again, I confirmed with the Las Vegas Public Library and the Nevada Secretary of State's Office that Mr. Rubbico was president of this organization. If the president of an organization can't provide information as to their activities, who can? Although a Mr. Bill Manning assured me that a refund was "not a problem," Mr. Mayer finally did call to tell me that the money had been passed on to The Gleaners, and that a refund was not possible.

I pursued this matter. I demanded to speak to the "founder" of The Gleaners, Ms. Celeste Tate. Their telephone numbers: (702) 731–4747; (702) 734–3663; and (702) 734–FOOD; are never answered. Only when I had insisted to Mr. Rubbico that I speak to Ms. Tate, and had followed up several times, did Ms. Tate call me back. One cannot call them, one has to wait for a return telephone call. Ms. Tate went on to tell me that their organization had been written up in several publications, most notable Newsweek and Megatrends for Women. Ms. Tate told me that recently, their "take" from the telemarketing efforts of The Charity Center had been increased from 10 to 20 percent. I hit her with the fact that they were defrauding older Americans and that it was unconscionable for a charity organization to spend 78 to 90 percent of its contributions on fundraising. She countered with a statement to the effect that she only wished they had more generous donors like my father. Of his $4,900 sent to The Gleaners, the vast majority went to the coffers of The Charity Center. Ms. Tate seemed quite content with the arrangement, and not at all perturbed that my father had been successfully defrauded out of a lot of money. In fact, Ms. Tate went on to talk about the "generous" proportion that they receive as a charity from telemarketing efforts. If this is generous, I shudder to think about other fraudulent telemarketing efforts out there. Through his power of attorney, Mr.

Bruce Dowd, (616) 621–3760, my father has requested a refund of his contributions also directly from The Gleaners, but to no avail.

The other organization that successfully defrauded my father out of $2,000 if Operation Life Community Development Corp. They employed the same telemarketing firm, The Charity Center. The listed telephone number for this organization is (702) 399–1424. This number is never answered. There is a recording, however, which notes that maintenance calls for the Ruby Duncan Manor is (702) 399–6084. The people at Ruby Duncan Manor maintain they have no contact with fraudulent charity fundraising efforts, but after much back and forth conversation I was finally advised that Mr. John Heart would call me back. His telephone number is (702) 735–5006. Mr. Heart advised me that his organization had engaged The Charity Center, but they soon dropped them because of their questionable telemarketing practices. He then told me to apply to National Clearinghouse at (702) 735–5006 for a refund of the $2,000 my father had sent in. Through his power of attorney, Mr. Bruce Dowd, (616) 621–3760, my father has requested a refund of this money. So far, no refund has been received.

I believe that something must be done about fraudulent charity telemarketing schemes. My major concern at this time, however, is that the U.S. Senate Commerce Committee, Subcommittee on Consumer, investigate the fraudulent telemarketing activities of The Charity Center in regard to raising funds for The Gleaners and Operation Life Community Development Corp. Any help or relief that you can give to put a stop to these parasite organizations from preying on the elderly would be very gratefully appreciated.

I have no quarrel with legitimate charities, who really make a difference in this country. However, I am very concerned that organizations such as The Gleaners, The Charity Center, and Operation Life Community Development Center prey off of established charities and put a blemish on legitimate fundraising efforts. Please contact Mr. John Arnold of the legitimate charity: Second Harvest Gleaners Food Bank of West Michigan, Inc., at 1250 Front Ave., NW., Grand Rapids, MI, 49504–3217 for his opinion on The Gleaners of Las Vegas. They have really been a problem in western Michigan and have successfully traded on the name of a long-established midwestern charity. This has to be stopped. You may contact Mr. Arnold at (616) 458–0113, or reach him by fax at (616) 458–0113.

Thank you for your consideration of my affidavit. I would be happy to help out in any way to stop these fraudulent activities which hit hard at older Americans and take advantage of their trusting natures, their willingness to help, and frequently, their depressed economic conditions. My father was such a target. I would like to see other older Americans spared from the predatory approaches of organizations such as The Gleaners, Operation Life Community Development Corp., and The Charity Center.

[USA Today, May 8, 1990]

ACROSS THE USA

RENO.—Ex-deputy attorney General Bryan Nelson is seeking nomination as attorney general to replace Brian McKay who is stepping down. He faces GOP primary duel with lawyer Randy Rumph. Democrats seeking job: Secretary of State Frankie Sue Del Papa, ex-district judge Leonard Gang. * * * Las Vegas Gleaners—food distribution charity—won't fold even though it was evicted from Sahara Hotel parking lot, say chief. Group will seek new home.

[Los Angeles Times, August 16, 1993]

American Red Cross officials are warning county residents to beware of phony solicitors who claim to be affiliated with the Red Cross.

Recently, a Las Vegas-based organization calling itself the Gleaners has been seeking large monetary donations from Orange County residents, according to Red Cross officials, who added that the Gleaners are not affiliated with the Orange County Red Cross or the American Red Cross.

People solicited by an organization claiming to be associated with the Red Cross are asked to verify the information with their local Red Cross chapter at (714) 835–5381.

[Wichita Eagle, July 12, 1991]

EXTRADITION OF ARSON SUSPECT SOUGHT

(by Robert Short)

Extradition proceedings are underway in Las Vegas to return a 28-year-old man from Wichita to face charges that he set his mother's house on fire in 1986 with her in it.

Daryl Ashford, known in Las Vegas as Cory Tate, skipped bail in Wichita in 1988 and disappeared for 3 years. Authorities think Ashford returned to Las Vegas early this year and became president of the Gleaners food bank program.

He faces one count of aggravated arson in Sedgwick County.

Ray Mauck, chief fire investigator in Wichita, said he contacted Las Vegas police after his office received information on Ashford's whereabouts.

"I got a tip that said where he was at, what he was doing, and what name he was using," Mauch said.

Las Vegas police arrested Ashford last month during a traffic stop. He was released June 28 on his own recognizance. Since then, he has refused to waive extradition, and proceedings have begun to return him to Kansas.

Mauck, who investigated the fire in 1986, said a comparison of photos leaves no doubt Tate and Ashford are the same man.

Ashford and his mother, Dottie, were at home at 1 a.m. on Jan. 31, 1986, when the back stairway of her home at 513 N. Edwards caught fire. Ashford suffered cuts and bruises while being rescued by firemen from an upstairs window. He was treated at Riverside Hospital. His mother was not injured.

"Charges were filed pretty quickly," Mauck said.

Mauck said a flammable liquid was used to start the fire, but he would not comment on why he believes Ashford started the fire. Mauch said there had been previous arsons in the 500 block of North Edwards, including one at the Ashford residence.

The charge of aggravated arson carries a potential prison term of 5 years to life.

The food bank in Las Vegas where Ashford worked has won national acclaim for its work but has been the subject of controversy. Questions have been raised as to the whether the organization serves the number of people it claims to feed. There also have been questions about the use of funds raised by the organization.

LETTER FROM JOHN M. ARNOLD, EXECUTIVE DIRECTOR, SECOND HARVEST GLEANERS FOOD BANK OF WEST MICHIGAN, INC.

OCTOBER 22, 1993.

CLAUDIA SIMONS,
U.S. Senate,
Washington, DC 20510

DEAR MS. SIMONS: Per our conversation of earlier in the week, attached are a multitude of materials on the Las Vegas-based telemarketing scam my agency is currently grappling with.

Briefly: Second Harvest Gleaners Food Bank of West Michigan, Inc. is the regional nonprofit clearinghouse for donated food (currently 2¼ tons per hour) on its way from the food industry to 790+ food pantries, soup kitchens, shelters and related charity agencies across the 40 counties of the western coastline of Michigan's Lower Peninsula and entire Upper Peninsula. We've been doing this work since 1981 and have an excellent reputation; everyone knows us as simply "the Gleaners". In early July, 1993 we began receiving calls from residents of our service area reporting that they had received calls from "the Charity Center" of Las Vegas, NV soliciting funds for "the Gleaners". The pattern of calls seemed to be focused on elderly people who enter contests. They were (and are yet being) told that they have won "the Grand Prize", a Chrysler LaBaron automobile, plus possibly gold, diamonds, cash, a Sony TV or other prizes worth a total of $25,000. To secure the prize, however, they are being told they either need to pay the taxes, or that they need to make a contribution. They are told that they may pay by check, by giving the caller their bank account number so that "the Charity Center" can do an electronic transfer from their account, or that they can put it on a credit card. Many people have been called, many of them multiple times, and at least two that we know of have sent in money ($5,500 in one instance, $500 in the other). Obviously, neither person has received the promised prize.

We are very interested in both getting these particular scammers shut down, and in helping in any way that we can to make it easier to shut down similar scams in the future. So as Senator Bryan's interest in telemarketing charity scams moves forward, please keep us posted on what we can do to help.

Thanks very much.

Sincerely,

JOHN M. ARNOLD,
Executive Director.

[Grand Rapids Press, July 9, 1993]

SALVATION ARMY WARNS AGAINST SHADY SOLICITORS

The Salvation Army office of Grand Rapids has issued a warning after an 86-year-old Walker man was nearly duped into donating $1,000 to a questionable solicitor.

"A telemarketing firm in Las Vegas was soliciting for a legitimate charity but their actions were dubious in nature," said John Schroeder, a spokesman for the Salvation Army.

Schroeder said when the man who received the call said he only gave money to the Salvation Army and another organization, the caller told him he worked for those organizations.

Then he gave the Walker man an 800 phone number so he could wire them the money immediately. The Walker man called the local branch of the Salvation Army to see why they needed the money so quickly and that put them (the local office) on alert.

Schroeder said he called the legitimate charity, which in turn reprimanded the telemarketer. Schroeder also filed a complaint with the Better Business Bureau.

"The Salvation Army doesn't raise money in Grand Rapids for Vegas and neither do the Gleaners. We don't want people being ripped off," said Schroeder.

He urges anyone who donates money to any charity to get as much information as possible if solicited by telephone.

"Find out who they are, where they're calling from, who they're soliciting for and the name of a local reference," suggested Schroeder.

If there are any doubts, don't make the donation, he advised.

LETTER FROM JOHN ARNOLD TO KEN VANDER MEEDEN, BETTER BUSINESS BUREAU

JULY 16, 1993.

We are very concerned about some telefundraising that is being conducted in the Grand Rapids area for "the Gleaners". We contacted the Michigan Attorney General's Office (Mr. Joe Kylman in Lansing at 517-373-1152) about the situation this morning; they said they'd look into it, but suggested that in the meantime we might alert your office and the media.

As you may know, our organization is the regional nonprofit clearinghouse for donated food on its way from the food industry to charity agencies which feed the needy. Incorporated here in Michigan in 1981, we now supply food to some 750 food pantries, soup kitchens, shelters, etc. across 40 of Michigan's 83 counties. We are a member of the Second Harvest National Food Bank Network and are a United Way agency. We do not solicit funds by phone.

Recently on two occasions, two weeks apart, wealthy older men here in Grand Rapids have received telephone calls from "The Charity Center" in Las Vegas, NV, asking for money for "the Gleaners". In the first instance the need was expressed as being so acute that if he'd write out his $2,000 check they'd send a courier right over to pick it up. In the second instance reference was made to a contest that one could enter, with cars and money as prizes, for a contribution to "the Gleaners".

That money isn't coming to us, nor to the food bank in Las Vegas. Where is it going? That is the $64 question which hopefully the Attorney General's Office will get an answer to. In the meantime we are concerned that our good name is being intentionally or inadvertently taken advantage of by these calls. There are only eight food banks like ours in the nation which have the word "gleaners" in their name. Of all the places in the U.S. one could call from Nevada in soliciting money for "the Gleaners", is it sheer coincidence that they are calling here? Again, we don't know, but we are concerned.

We wanted to make sure your office was aware of this situation in case you receive calls from people who have received calls from Las Vegas. Wherever the solicited funds might be going, they are not coming to us!

LETTER FROM JOHN ARNOLD TO JOE KYLMAN

JULY 16, 1993.

DEAR MR. KYLMAN: Per our conversation this morning, a situation has arisen which is causing my organization some alarm: wealthy persons in the Grand Rapids area are being contacted by telephone from Las Vegas, NV to give large sums of money to "the Gleaners". The funds are not being collected by or for either us or our counterpart agency in Las Vegas. Who is the beneficiary, and why are they calling people here? That is what we are hoping you will try to clarify.

What we know is:

On July 2, 1993 a Mr. James Wheeler here in Grand Rapids was contacted by telephone by "Trina" of "The Charity Center" in Las Vegas, NV about their need for him to give $2,000 to "the Gleaners" right away. He was told that the need was so urgent that they were willing to send a courier from DHL Worldwide right over to pick up his check. Mr. Wheeler said that he might be able to come up with $1,000 but that he normally gives only to The Salvation Army. Trina quickly reassured him. that "the Gleaners" helps The Salvation Army and so giving to "the Gleaners" was pretty much the same as giving to The Salvation Army itself. Mr. Wheeler got her phone number (702-259-1099) and said he'd call her back, and then called The Salvation Army here to see what was up; he spoke with John Schroeder (616-459-3433), the West Michigan Division's Development Director, who, of course knew nothing. Mr. Schroeder called The Salvation Army in Las Vegas and they knew nothing, so then he called me. I knew nothing, so Mr. Schroeder called Trina back to try to find out what was up; when she was less than forthcoming with specific details he expressed his concern about a possible scam and she quickly ended the conversation. Moments later Mr. Schroeder received a call from what he said sounded like a car phone, from "Tommy" from "the Gleaners" (702-595-4401) explaining that indeed "The Charity Center" does do fundraising for "the Gleaners", but that their calling people in Michigan was an error which he'd now taken care of and which wouldn't happen again, so why don't we just forget the whole thing? In the meantime I had spoken with my counterpart in Las Vegas, Bessie Braggs of the Community Food Bank of Clark County (702-644-8240) who said she'd heard of something called "The Charity Center" but knew nothing of them or of their calling to Michigan for money.

We heard nothing more about any of this until on July 15 one of my staff related to me that an acquaintance of hers had mentioned to her that he (Mr. Marwood Wright, 616-949-1085) too had received a call this week from someone in Las Vegas regarding a contest he could enter, with cash and automobiles as prizes, if he would give them money for "the Gleaners".

At that point I called Ms. Braggs in Las Vegas about what, if anything, she'd come up with, and she said she had confirmed that indeed there is such a thing as "The Charity Center", and that their address is 5112 West Charleston Blvd., Las Vegas, NV. But that is all she knew.

So we only have confirmation of their making the two calls, but those were spread over a two week period so one has to wonder how many more there might have been and how much money has been sent off to what purpose?

If you would look into this we would very much appreciate it. Thank you very much.

LETTER FROM FRANK J. KELLEY, ATTORNEY GENERAL, STATE OF MICHIGAN AND JOSEPH J. KYLMAN

JULY 21, 1993.

THE CHARITY CENTER,
5112 West Charleston Boulevard,
Las Vegas, NV

DEAR SIR OR MADAM:

FOLLOWING IS YOUR FILE IDENTIFICATION, WHICH MUST BE USED ON ALL COMMUNICATIONS IN REGARD TO THIS MATTER:

File Number: T9301112
File Name: The Charity Center

It has come to the attention of the Attorney General that the above entity may be a charitable organization soliciting or receiving contributions and/or employing professional fund raisers for fund raising or consultation services, or may be a professional fund raiser employed by a charitable entity.

Pursuant to the Charitable Organizations and Solicitations Act, 1975 PA 169, as amended (copy enclosed), it may be necessary for the organization and/or professional fund raiser to obtain a license to solicit in Michigan.

In order for us to determine whether licensure of the charitable organization will be required, please submit the enclosed questionnaire with copies of the Articles of Incorporation showing a dated "FILED" stamp showing acceptance by the appropriate state agency, any advertising or soliciting materials used in the campaign, and any contracts entered into between the organization and the professional fund raiser.

Also enclosed are our license application and instructions. Unless an exemption is documented, the charitable organization must apply for licensure. The application may be submitted simultaneously with the questionnaire and other requested documents if you wish to expedite the licensing process. Please read thoroughly all instructions and notes.

In addition, enclosed please find an application for licensure to be completed by the professional fund raiser.

In the event we do not receive a response within the next twenty (20) days, this file may be referred to an Assistant Attorney General for appropriate legal action. Soliciting contributions without a license is a violation of law, for which there are civil and criminal penalties.

Very truly yours,

FRANK J. KELLEY,
Attorney General.
JOSEPH J. KYLMAN,
Auditor, Charitable Trust Section.

LETTER FROM JOHN ARNOLD TO JOE KYLMAN

SEPTEMBER 23, 1993.

DEAR MR. KYLMAN: Per the attached letter of Mr. Frank Dowd (dtd Sept. 22, 1993), "The Charity Center" of Las Vegas, NV is obviously continuing to solicit contributions from Michigan residents in the Grand Rapids area, and has, in at least this one instance, secured a substantial amount of money from one of the persons solicited.

Earlier this week we were also contacted by a Ms. Jackie Lemke of Grand Rapids who was called by "The Charity Center" this past weekend, again, soliciting funds for "the Gleaners", with the story that if she'd give them $800.00 they'd send a courier right over to pick it up, and she'd win any of a number of prizes, including a car, a savings bond, a television, etc. She declined to contribute and has volunteered as a witness if you'd like further information on what exactly they are telling and promising people. She can be reached at 616-538-4469.

And also, there are a relatively small number of food banks around the nation which have "Gleaners" in their name. When this all began in July I notified them all to be on guard for similar calls in their area, and I have since been notified by my counterpart in Indianapolis that at least one such call has occurred in their area.

We remain extremely concerned that funds are being solicited across West Michigan for "the Gleaners" by some group having no connection whatsoever with the only "Gleaners" organization here. People giving funds almost certainly believe they are helping us, and if Mr. Dowd's findings are accurate, they may not, in fact, be helping anyone, except the telemarketers themselves.

I'm sure you have many cases clamoring for attention, but when these guys are taking generous old farmers for $5,500 at a pop, they need to be stopped, and the sooner the better.

[Grand Rapids Press, September 27, 1993]

13 ARRESTED IN LOUISIANA PHONE SCAM

SLIDELL, LA.—The con artists would ring cow bells when they reeled in another victim. And their cohorts, busy at phones in the small office, would stop and cheer.

Police said they have busted a major phone and mail swindle by an office of people who preyed on elderly people across the United States and Canada.

Police Chief Ben Morris estimated that the operation, which went by several names, bilked victims of more than $1 million before it was smashed Thursday with 13 arrests. "We got major, major slime here," he said.

He said the scam promised prizes of as much as $75,000, but victims were told that first they would have to advance money to pay taxes on the prize. The amount victims sent in ranged from a few hundred to several thousand dollars.

Morris said he expects those involved also may face federal charges of mail and telephone fraud. The FBI and the U.S. attorney's office also are investigating.

Police seized three thick note-books filled with the names and addresses of duped people, along with the amount of money they sent in. Ages also were noted; the oldest victim police have found in the lists was 94.

"We've accounted for more than a half million (dollars) in one book," Morris said.

Police also seized phones, computers, fax and copy machines and file cabinets packed with bundles of responses to the operation's mass mailings.

On Sept. 10, an unidentified Alabama woman told Slidell police she had sent money to the operation but did not receive the cash she was promised, Morris said. But she also had warned the swindlers that she planned to report their activities to police.

"We began running surveillance. They shut down operation for about four to five days and than picked up again," Morris said.

Police said the record books revealed some were duped twice.

Victims' names were sent to a Las Vegas operation, which had people call them and offer to get their money back, for a payment of $2,000, Morris said.

Police found lengthy speeches used to cajole and pressure victims, along with evidence of numerous other scams, including ones in which people were asked to send money to drug prevention and environmental programs.

Police said the operation had been in Slidell since mid-August. It had previously operated in Bossier City, La., and in Oklahoma, he said, and used several names, including Midwest Distributors, Midwestern Distributors, Southern Enterprises and Southern Wholesale.

LETTER FROM JOHN ARNOLD TO CLAIR ELKINGTON

SEPTEMBER 29, 1993.

DEAR MR. ELKINGTON: Thank you very much for being interested in looking into the Charity Center/Gleaners telephone fundraising matter.

What we know is this:

Early in July calls started coming to people here in West Michigan from The Charity Center of Las Vegas, NV soliciting funds for "the Gleaners". Among the individuals who we know have been called are:

Mr. Marwood Wright, 616-949-1085

Ms. Jackie Lemke, 616-538-4469

Mr. James Wheeler, 616-942-1697

Mr. Myron Dowd, reachable through his son, Frank Dowd at 301-986-4302

The sales pitch has changed from time to time, but essentially it is that funds are being raised for "the Gleaners", and that either they should just give money, or that there is a contest going where they can win prizes if they give money (or that they've already won a prize but need to pay the taxes before receiving it), and that they need to write out the check right now, and the Charity Center will send a courier right over to pick it up. Most of the people who have been called have been called multiple times. We are aware of additional calls having been made into the Cadillac, MI and Indianapolis, IN area by this same outfit with the same sales pitch.

Per the attached materials, our State Attorney General's Office has sent "The Charity Center" an inquiry about their being approved to solicit in Michigan, but we've not heard anything back from the A.G.'s Office about what has come of that.

As I mentioned, there are two national organizations like ours, and the "Gleaners" of Las Vegas, NV is not associated with either of them:

Second Harvest, 116 S. Michigan Ave., Suite 4, Chicago, IL 60603, 312-263-2303; and Food Chain, 970 Jefferson Street, NW, Atlanta, GA 30318, 800-845-3008.

I plan to try to get out a press release warning people about the calls a.s.a.p. In it I will ask that people who have been called—particularly if they've actually given any money—to please contact me. I will then promptly feed that information on to you.

Please do let me know what more we can do to help We are extremely concerned that nice people are being bilked, and bilked in the belief that they are somehow helping us. Our fondest dream is of the telemarketing stopping, everyone getting their money back, and, as appropriate, a bunch of telemarketers going off to jail.

We will be glad to help you in any way we can.

[Grand Rapids Press, October 2, 1993]

TELEPHONE SOLICITORS NOT THE REAL THING, LOCAL GLEANERS WARN

They're at it again.

Calls from scammers soliciting funds, claiming the money will go to the "gleaners," are on the rise in the Grand Rapids area, forcing the Second Harvest Gleaners of West Michigan to alert federal officials to the problem.

For several weeks, people have phoned the Grand Rapids office asking about calls they received from persons encouraging contributions to the gleaners.

Although the scam artists have not referred to the local organization by name, victims mistakenly have been led to believe that the food bank is strapped for cash.

The local food bank, however, never solicits funds by phone. It began issuing warnings about the phone calls several weeks ago, but they haven't stopped, said executive director John Arnold.

"They (the calls) have gotten worse," he said. "More people are being called, and one elderly gentleman sent (the caller) $1,500. We've gotten calls from people as far north as Cadillac and as far south as Indiana saying they've been contacted."

Arnold said he thinks the scammers, whose calls are originating from a Las Vegas-based organization called The Charity Center, have somehow gotten a list of elderly, wealthy persons who are prone to enter contests. The caller sometimes promises entry in a contest if the potential contributor sends a certain amount of money.

After Arnold read an article describing a similar fraud originating out of Las Vegas—an operation recently busted by the FBI—he decided to alert federal officials that folks here may also be victimized by the group.

"It's not just here in West Michigan; they're calling so many places," Arnold said. "It just sounded like this thing is much bigger, so I contacted them."

FBI officials in Las Vegas, who are handling the local organization's complaint, were unavailable for comment Friday.

Anyone who receives calls from the phony fund-raisers should call Second Harvest Gleaners, 458-7856, Arnold said.

LETTER FROM JOHN ARNOLD TO CLAIR ELKINGTON

OCTOBER 15, 1993.

On 10/8/93 JACKIE LEMKE of Grand Rapids (616-538-4469) received her 7th call from the Charity Center. The caller identified herself as Linda Lanton (had a Southern/Texas accent) calling for the Gleaners to report that Ms. Lemke had won the Grand Prize and would receive a Chrysler LaBaron, $15,000 in cash, a diamond/gold rush worth $15,000 or a 43 inch Sony color TV. All she needed to do to secure the prize was to write them a check or give them her account number. Ms. Lemke hung up on them.

On 10/13/93 PAUL PATGOK of Grand Rapids (616-451-4154) received his 3rd call from the Charity Center. The caller identified himself as Mike Grant and told Mr. Patgok to "Sit down, because I have fantastic news for you. You have won the grand prize!"—The prize being cash, a car, a diamond ring or a 46 inch Sony TV; the least he'd get is $15,000 in prizes. All he needed to do is contribute $1,000 to the Gleaners, which has been "recognized by the White House". When Mr. Patgok said that he didn't have $1,000 right now, Mr. Grant told him to call him back at 1-702-259-9910 when he does and that he'll be able to get the prize then. (Earlier in the call, Mr. Grant did ask for Mr. Patgok's bank account number as an alternative to Mr. Patgok's writing a check.)

On 10/13/93 and 10/14/93 JUNE MIEHLKE of Cadillac (616-775-2278) received a total of three calls from the Charity Center. The first was from a Paul O'Halliren; the second two were from Derek Nardone, who said he'd been with the Gleaners for eight years. The first call came at a bad time and Ms. Miehlke told them to call back later. On 10/14 Mr. Nardone called to report that she'd won $15,000 in prizes; later in the call that seemed to change, because the amount of prizes she was to get seemed to depend on how much she contributed: $1,600, $1,100 or $880. Mr. Nardone first wanted to make sure she had $2,000 in the bank. He told her that the Gleaners has 190 locations nationwide and provides food for families. She had to contribute right then; when she balked, he said he'd give her 10 minutes to think about it and then would call back. He told her that if she wanted to win those prizes she needed to write out a check and call 1-800-238-5355 (Federal Express) and bill a pick-up to Acct. No. 170108914, sending the package to 6 Power Office Park, Woburn, MA 01801. He gave his telephone number as 1-702-259-1099. When he did

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call back a few minutes later and she said they didn't have the money, he said they were wasting his time and that he'd just give the prize to someone else in Cadillac, and hung up.

Just an update on what we're doing on this end:

On October 1 we issued the attached press release to West Michigan media, resulting in coverage of the problem as in the attached Grand Rapids Press article.

On October 4 I received calls from two people who had seen the Press article and wanted to let us know of the calls they'd received:

Mr. Paul Patgok at 616-451-4154 in Grand Rapids reported that in mid-September he was called by someone at the Charity Center telling him that he had won a Chrysler LaBaron automobile, and simply needed to send them $600.00 in order to get it. They told him that this was part of a fundraising contest for the Gleaners, and that there are Gleaners all over the U.S. When he said he didn't want to write them a check, they helpfully suggested that he just give them his bank account number so they could do an electronic transfer from his account to theirs. When he refused to do that, they said it was too bad about his losing out on the car; that they'd give him a few days to think about it and would then call him back. They did call back, but he still refused to send them anything.

Mrs. Delores Melpolder at 616-453-1082 (evenings) in Grand Rapids reported that five or six weeks ago she was called by someone who said his name was Allen Bernenmaum and was calling from the Charity Center to raise money for the Gleaners Foundation to help Mid-west Flood Victims. He said that she'd won the contest they were running and she could determine which prize she would get by deciding how much money she was willing to send them: She could send $1,000, $1,500 or $3,000, and in return would receive $7,500 in cash, a Dodge Colt, or $50,000 in cash. He said she should send (mail) her check to 2550 S. Bunville (she isn't certain she got the spelling of that right) in Las Vegas, NV 89102. When she hesitated, he quoted the Bible to her about helping the needy, and offered to just charge her contribution against her credit card if she'd just give him her credit card number. At that point she hung up on him.

Both of these individuals sounded quite elderly.

Yesterday I reported to you that earlier in the summer a Mr. Paul Patgok at 616-451-4154 in Grand Rapids had been contacted by the Charity Center for the Gleaners. Last evening Mr. Patgok called me to report that he'd been called by the same guy with pretty much the same sales pitch again yesterday, but this time from the Boston, MA area. The caller identified himself as "Derek Nairnone" and told Mr. Patgok that he had won a $15,500 Chrysler LaBaron in the contest being run by the Gleaners to raise money to help the homeless, and that all Mr. Patgok had to do was send $880.00 to the Gleaners at 6 Power Office Park, Woburn, MA 01801. When Mr. Patgok balked at sending them the money, the caller said that: the prize also included a diamond ring and a 43 inch Sony television, that the Gleaners had been recognized by the White House, and that Mr. Patgok could simply give them his checking account number so they could do an electronic transfer from his account. Needless to say, Mr. Patgok refused.

Mr. Brian Pietrcak at 616-531-7348 in Grand Rapids reported to me yesterday that over the summer he has been contacted by the same Las Vegas people five times, and that he did send them $500.00 to secure the prize they told him he'd won. The calls began in late July with a call trying to get him to spend between $1,200 and $3,000 for some household cleaning supplies. The extremely persistent caller insisted that these products were so concentrated and good for the environment that the only reasonable thing for a person to do was to buy them; but Mr. Pietrcak refused. I pressed Mr. Pietrcak about how he knew or suspected that these were the same people who called him later; he expresses certainty that they are one and the same. Then on Aug. 6, he was called again by a person identifying himself as "Michael Cox" calling to report that Mr. Pietrcak had won a contest being run by the Gleaners to raise funds to help flood victims. If he would just send the Gleaners a check for $500.00 he was guaranteed one of four prizes: a Chrysler LaBaron, $25,000 in cash, jewelry, or $2,500. When Mr. Pietrcak agreed to send the money, he was switched over to someone identifying himself as Michael Baldwin who gave him the details: Write out the check to the Gleaners, and address it to Gleaners, Inc., 2550 S. Dunville, Las Vegas, NV 89102; phone number 702-364-8125. A few minutes later a Federal Express courier picked it up. The check has now cleared, and Mr. Pietrcak has received back from the Gleaners a receipt affirming that his contribution is tax deductible and assuring him that he will be receiving jewelry as a prize.

Call #3 was to see if he wouldn't like to send them even more money and win an even bigger prize; he refused. Call #4 was on Sept. 28 and was the same as call #3, with the caller expressing sadness at Mr. Pietrcak's passing up such a good deal;

when he refused to send them any money or let them put it on his credit card, they said they'd give him a few hours to think about it. Call #5, was their calling back later that same day to see if he'd changed his mind.

I can't recall which person it was, but tying back in with Mr. Pietrcak's experience, one of the other people I've heard from mentioned that the calls had begun with a sales pitch for multiple thousands of dollars worth of cleaning supplies; but as that person was less certain that it was the same group calling I just disregarded it as probably being unrelated. Apparently not.

LETTER FROM FRANK J. KELLEY AND DAVID W. SILVER

OCTOBER 11, 1993.

LARA WILSON,
Legal Assistant, Nevada Attorney General,
Las Vegas, NV 89158

DEAR MS. WILSON: Please note that the above entities continue to place telesoliciting calls to Michigan residents (primarily in Grand Rapids) requesting donations for Gleaners.

This soliciting is deceptive and devious, because in the Grand Rapids community the Second Harvest Gleaners Food Bank is a respected food bank charity.

Enclosed please find additional complaints we have received from Second Harvest Gleaners, which have also been transmitted to Clair Elkington, FBI, Las Vegas.

Investigator Mike Anzalone told me last week that you are preparing action in conjunction with the FCC against The Charity Center/Gleaners.

Please accept these complaints as our encouragement to proceed quickly to put a stop to this fraud.

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